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THE WORKS OF THAT Stuart. GRAVE and LEARNED LAWYER Iudge Ienkins,

Prisoner in *Newgate*.

UPON

Divers STATUTES,

Concerning the *Liberty*, and *Freedome* of the *Subject*.

With a perfect Table thereto annexed.

Plebs sine Lege ruit.

LONDON,
Printed for *I. Gyles*, and are sold at his Shop at *Furnivals-Inne*.
MDCXLVIII.

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THE

WORKS

OF THAT

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2 *The King.*
3 *Treason.*
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First, if the King do misdemeane himselfe, by reason, in the right of his Crown, his Leidges are bound by Oath to remove the King.

Secondly, seeing the King could not be reformed by suit of Law, that ought to be done *per aspera*, that is by force.

Thirdly, his Leidges be bound to Govern in aid of him, and in default of him, p. 9, 50.

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The Writ whereby the King assembled the two Houses, which is called the Writ of Summons, at all times, and at this Parliament used, and which is the warrant, ground, and foundation of their meeting, is for the Lords of the House of Peers, to Consult and Treat with the King (that is the *Parler*) of great Concerning, touching

1. The King.
2. The defence of this Kingdome.
3. The defence of the Church of England.

*p.*24,34. *p* 25,81,120,121.

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And in case of the Kings Minority, the Protector hath his liberty, and negative voice, in respect of the King. p. 52.

The styles of the Acts printed from 9. Hen. 3. to 1. Hen. 7. were either, the King ordaines at his Parliament, &c. Or, the King Ordaineth by the advice of his Prelates and Barons,

rons, and at the humble petition of the Commons, &c.

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No Act of Parliament bindes the Subject, without the aſſent of the King. *p.* 71. 72.

When an Act of Parliament is againſt common Right, or Reaſon, or repugnant, or impoſſible to bee performed, the Common Law ſhall controle it, and adjudge it to be void. And ſuch is an Act for a perpetual Parliament. *p.* 139.

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man in case of Treason or Felony, p. 15. 16. 78.

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The present Parliament.

THis Parliament beganne 3. *Novem.* 1640. and in the beginning thereof the King acquitted the Ship-Money, Knighthood-Money, seven Courts of Iustice, consented to a Trieniall Parliament, setled the Forrest bounds, tooke away the Clarke of the *Market*, of the Houshold, trusted the Houses with the Navy, passed an Act not to dissolve this Parliament without the Houses assent; No people in the world so free, if they could have been content with Lawes, Oathes, and Reason, and nothing more could, nor can be devised to serve us, neither hath been in any time before. p. 34.

Notwithstanding all this (*Ian.* 10. 164[1].) the king was driven away from *London*, by frequent Tumults, and 2. thirds, and more of the Lords had deserted that House, for the same cause, and the greaterpart of the House of Commons left that House, also for the same

same reason: New men chosen in their places, against Law, by the pretended Warrant of a counterfeit Seal, and in the Kings name, against his consent, leavying War against Him, and seizing his Forts, Ports, Magazines, and Revenue, & converting them to his destruction, the subversion of the Law, and Land, laying Taxes on the people never heard of before in this Land, devising new Oathes to oppose the Forces raised by the King, &c. p. 35.

From the 3. *Novem.* 1640. unto *Jan* 10. 1641. they had time to persecute all evil Counsellors and Iudges. p. 17. 41.

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1. Against Common right; for thereby the Parliament men will not pay their debts: And they

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2. Against common reason, for Parliaments were made to redresse publique Grievances, not to make them.

3. Impossible, the Death of his Majesty (whom God long preserve) dissolving it necessarily.

4. Repugnant to the Act for a Triennial Parliament, and to the Act for holding a Parliament once a yeare. *p.* 139. 140.

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That which will save this Land from destruction, is an Act of Oblivion, and his Majesties Gracious Generall Pardon, the Souldiers their Arrears, and every man his own, and Truth and Peace established in this Land, and favourable regard had to the satisfaction of tender Consciences.

God save the King.

No peace can possibly be had without the King, ibid.

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Gedsaver & King.

The the Honourable Societies of *Grayes Inne*, and of the rest of the Innes of Court, and to all the Professors of the LAW.

I Have now spent Forty five yeares in the Study of the Lawes of this Land, being my Profession, under, and by the conduct of which Lawes this Common-wealth hath flourished for some ages past in great splendor and happinesse (jam leges est ubi Troja fuit. *The great and full body of this Kingdome hath of late yeares fallen into an extreame sickenesse, it is truely said that the cause of the disease being knowne, the disease is easily cured. There is none of you I hope, but doth heartily wish*

the recovery of our common parent, our native countrey (Moribus antiquis stat res Britannica. *I call God to witnesse that this discourse of mine hath no other end then my wishes of the common good: how farre I have been from Ambition my life past, and your owne knowledge of me, can abundantly informe you: and many of you well know, that I ever detested the Ship-money and Monopolies, and that in the beginning of this Parliament, for opposing the excesses of one of the Bishops, I lay under three Excommunications, & the Examination of seventy seven Articles in the high Commission Court. His sacred Majesty, (God is my witnesse) made me a Judge in the parts of Wales against my will, and all the meanes I was able to make; and a patent for my place was sent me, for the which I have not paid one farthing, and the place is of so inconsiderable a benefit*

benefit that it is worth but 80. *l.* per Annum *when paid, and it cost me every yeare I ſerved twice as much out of my owne eſtate in the way of an ordinary and frugall expence. That which gave me comfort was, that I knew well that his Majeſty was a juſt and a prudent Prince.*

In the time of the Atturney-ſhips of Maſter Noy *and the Lord* Banks, *they were pleaſed to make often uſe of me, and many references concerning Suits at Court upon that occaſion came to my knowledge; and as I ſhall anſwer to God upon my laſt account this is truth, that all or moſt of the references which I have ſeene in that kind (and I have ſeene many) were to this effect, that his Majeſty would be informed by his Councell if the ſuits preferred were agreeable to the Lawes, and not inconvenient to his people, before he would paſſe them, (what could*

a juſt and pious Prince doe more? Gentlemen, you ſhall finde the cauſe and the Cure of the preſent great diſtemper in this diſcourſe, and God proſper it in your hands, thoughts, and words, as the caſe deſerves.

Hold to the Lawes, this great body recovers: forſake them, it will certainely periſh. I have reſolved to tender my ſelfe a Sacrifice for them as cheerefully, and I hope (by Gods aſſiſtance) as conſtantly as old Eliazer did for the holy Lawes of his Nation.

Your Well-wiſher

David Jenkins.

Now Priſoner in the Tower.

LEX

Jacob Taylour
hunc librū poſſidet.
Schola Gramatica
apud Corsham
præceptor.

LEX TERRÆ.

THe Law of this Land hath three grounds: First, **Custome.** Secondly, **Judiciall Records**, Thirdly, **Acts of Parliament.** The two latter are but declarations of the **Common-Law** and **Custome** of the Realme, **touching Royal Government.** And this Law of **Royall Government** is a **Law Fundamentall.**

The Government of this **Kingdome** by a **Royall Soveraigne,** hath been as ancient as **History** is, or the memoriall of any time; what power this **Soveraignty** alwaies had, and used in warre and peace in this **Land,** is the scope of this discourse; That **Usage** so practised makes therein a **Fundamentall Law,** and the **Common Law** of the Land is **common Usage, Plowdens Commentaries** 195. For the first of our Kings hithence the Norman Conquest, the first **William,** second **William, Henry** the first,

The Kings Prerogative is a principall part of the common Law. Com. Litul. 344. 27 Hen. 8. Stamford, prer. fol. 1 2 Pars instit. fol. 496 3. Pars Instit pag 84

first, Stephen, Henry the second, and Richard the first, the Customes of the Realme touching Royall Government, were never questioned: The said Kings injoyed them in a full measure. In King Johns time the Nobles and Commons of the Realme conceiving that the ancient Customes and Rights were violated, and thereupon pressing the said King to allow them in the seventeenth of King John, the said Liberties were by King John allowed, and by his Sonne Henry the third, after in the ninth yeare of his Reigne confirmed, and are called *Magna Charta*, and *Charta de Foresta*, declared foure hundred twenty two yeares sithence by the said Charters.

Now rests to be considered, after the Subjects had obtained their Rights and Liberties, which were no other then their ancient Customes (and the fundamentall Rights of the King as Soveraigne are no other.) How the Rights of Soveraignty continued in practise from Henry the thirds time untill this present Parliament of the third of November, 1640. for before Henry the thirds time, the Soveraignty had a very full power.

Rex

Rex habet Poteſtatem & juriſdictionem ſuper omnes qui in Regno ſuo ſunt, ea que ſunt juriſdictionis & paucis ad nullum pertinent niſi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat. This proves where the ſupreme Power is. *Bracton. temp H.3 l 4 cap 24 Sect. 1*

A Delinquent is he who adhears to the Kings Enemies, *Com. Sur. Litil.* 261. This ſhewes who are delinquents.

Omnis ſub Rege & ipſe ſub nullo niſi tantum Deo, non eſt inferior ſibi Subjectis, non parem habet in Regno ſuo: This ſhewes where the ſupreme power is. *Sect. 5. Bract ibid.*

Rex non habet ſuperiorem niſi Deum, ſatis habet ad pœnam quod Deum expectat ultorem. This ſhewes where the ſupreme power is. *Bracton, l 3 tract. 3. de delicti, c. 3 Bracton, l. cap. 7*

Treaſons, Fellonies, and other Pleas of the Crowne, are *propria cauſa Regis*: This ſhewes the ſame power.

By theſe paſſages it doth appeare

what the Custome was for the power of Soveraignty before that time, the power of the Militia, of coyning of Money, of making Leagues with forraigne Princes, the power of pardoning, of making of Officers, &c. All Kings had them, the said Powers have no beginning.

Sexto Edw. 1. Com. Sur. Litl. 85. Lege Homage, every Subject owes to the King (*viz.*) Faith *de Membris, de vita, de terreno Honore*, the forme of the Oath, *inter vetera statuta* is set downe, We read of no such, or any Homage made to the two Houses, but frequently of such made by them.

Edward 1.

It is declared by the Prelates, Earls, Barons, and Commonalty of the Realme, that it belongeth to the King and his Royall Signiory, straitly to defend force of Armour, and all other force against the Kings peace, at all times when it shall please him, and to punish them that shall doe contrary according to the Law and Usage of the Realme, and hereunto they are bound to ayd their Soveraigne Lord, at all seasons when need shall be. Here the supreame power in the time of Parliament, by both Houses is declared to belong to the King.

7 Ed. 1. Statute at large, fol. 42.

At

At the beginning of every Parliament, all Armes are, or ought to be forbidden to be borne in *London*, *Westminster*, or the Suburbs. This condemnes the multitudes comming to *Westminster*, and the Guards of armed men. 7 Ed 2. 4. *pars instit.* 14.

All who held by Knights service and had twenty pounds *per annum*, were distraynable *ad Arma militaria suscipienda*: This agrees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3 *November*, 1640. The King out of his grace, discharged this duty, which proves that the power of Warre and preparation thereto, belongs not to the two Houses but only to the King. 1 Edw 2. de, *Militibus*,

The two **Spencers** in **Edw. 2.** time hatched (to cover their Treason) this damnable and damned opinion (*viz.*) That Legiance was more by reason of the Kings politick capacity then of his person, upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himselfe by reason in the right of his Crowne, his Lieges are bound by Oath to remove him. Secondly, seeing the King could not be removed by suit of Law it was to *Edw. 3. Calvins Case, Cook l. 7 fol 11.*

he done by force. Thirdly, that his Lieges be bound to governe in default of him.

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis* in *Ed.* 2. time, the other by 1. *Edw.* 3. *cap.* 2. All which Articles against the Spencers are confirmed by this last Statute, the Articles are extant in the booke called *vetera Statuta*. The separation of the Kings person from his power, is the principall Article condemned, and yet all these three damnable, detestable, and execrable consequents, are the grounds whereupon this present time relies, and the principles whereupon the two houses found their cause.

The Villeine of a Lord, in the presence of the King cannot be seized; for the presence of the King is a protection for that time to him: This shewes what reverence the Law gives to the person of a King.

Reges, sacro oleo uncti sunt capaces spiritualis jurisdictionis: But the two Houses were never held capable of that power.

Rex est persona mixta cum sacerdote habet Ecclesiasticam & spiritualem jurisdictionem: This shewes the Kings power in Ecclesiasticall Cities.

The

The Lands of the King is called in Law *Patromonium ſacrum*: The Houſes ſhould not have meddled with that ſacred Patromony. *Com. Sut. Littl. Sect. 4.*

The King hath no Peere in his Land, and cannot be judged? *Ergo* the two Houſes are not above him. 3 Ed. 3. 18

The Parliament 15. *Ed.* 3. was repealed, for that it was againſt the Kings Lawes and prerogative, 4 *pars inſtit. fol.* 25. This ſhewes cleerely the Propoſitions ſent to Newcaſtle, ought not to have been preſented to his Majeſty, For that they are contrary to the Lawes and his Prerogative.

The Lords and Commons cannot aſſent in Parliament to any thing that tends to the diſ-inheriſion of the King and his Crowne, to which they are ſworne: This condemnes the ſaid Propoſitions likewiſe. 4 *Part. Cooke inſtit. fol.* 14 42 E. 3.

To depoſe the King, to impriſon him untill he aſſent to certaine demands, a warre to alter the Religion eſtabliſhed by Law, or any other Law, or to remove Councellors, to hold a Caſtle or Fort againſt the King, are offences againſt the Law declared to be treaſon by the reſolutions herein after mentioned, by that Law men are bound to ayd the King when warre is levied againſt him in his. Parliament Rol. num. 7 *Rex & conſuetudo Parliamenti.*

Treaſon

Deſcription

25 Ed. 3. cap. 2. his Realme. King in his Statute must be intended in his naturall body and person that only can dye; for to compasse his death, and declare it by overt Act is declared thereby treason; to incounter in fight such as come to ayd the King in his Warres, is treason.

Compassing of the Queenes death, of the Kings eldest Sonne, to coyne his money, to counterfeit his Great Seale, to leavie Warre against him, to adhere to such as shall so doe, are declared by that Act to be high treason. This Statute cannot referre to the King in his politique capacity, but to his naturall, which is inseparable from the politique; for a body politick
20. cap. 13 can have neither Wife, nor Childe, nor leavie Warre, nor doe any Act but by the operation of the naturall body: A Corporation or body politick hath no soule or life, but is a fiction of the Law, and the Statute meant not fictitious persons, but the body naturall, conjoyned with the politique, which are inseparable.

The clause in that Act, that no
21 Ed. 4. 14 man should sue for grace, or pardon
R. 2. 11. an. for any offence condemned or forfeiture given by that Act, was repealed by a subsequent Act in 21. R. 2 hol-

den

den unreasonable, without example; and against the Law and cuſtome of the Parliament. This condemnes the Propoſition for diſabling the King to Pardon. 4 *pars inſtit. fol.* 42. The Act of 11 *R.* 2. ſo much urged by the other ſide, was an Act to which the King conſented, and ſo a perfect Act: yet Note the Army then about the Towne: Note that that Law is againſt private perſons, and by the 3. *cap.* thereof, the treaſons there declared are declared to be new treaſons made by that Act, and not to be drawne to example, it was abrogated 21 *R.* 2. and revived by an uſurper 1 *H.* 4. to pleaſe the people, and by the tenth chapter thereof Enacts, that nothing ſhall be treaſon but what is declared by 25 *Ed.* 3. 4 *Pars inſtit. fol.* 42. 16 *Ed.* 2. *cap.* 5. 16. *R.* 2. *cap.* 5. *H.* 4.

The Regality of the Crowne of England; is immediately ſubject to God and to noue other. Plaine words, ſhewing where the ſupreame power is.

The Commiſſion of Array is in force, and no other Commiſſion, *Rot. Parlm.* 5 *H.* 4. *numb.* 24. an Act not printed, this Act was repealed by 4. and 5. P. *&* *M. cap.* 2. this repealed by the Act of 1 *Jacobi*, and ſo it is of force at this day, for the repealing

Statute

Statute is repealed 4. *pars institut, fol.* 51. & 125. publiſhed ſithence this Parliament, by the deſire of the houſe of Commons, their Order is printed in the laſt leafe of the commentaries upon *Magna Charta*.

A booke allowed by Sir *Na. Brent* called the reaſon of the War: *fol.* 65.

Sir *Edward Cooke*, by their party is holden for the Oracle of the Law, who wrote the ſaid fourth part, in a calme and quiet time, and I may ſay, when there was no need to defend the Authority of the Coumiſſion of Array.

For that objection, that that Commiſſion leaves power to the Commiſſioners to tax men *ſecundum facultates*, and ſo make all mens eſtates Arbitrary: the anſwer is, that in levying of publike aydes upon mens goods, and eſtates, which are variable, and probably cannot be certainly known by any but the owners, it is impoſſible to avoid diſcretion in the aſſeſments, for ſo it ever was, and ever will be. By this appeares that the Votes of the two Houſes againſt the Commiſſion of Array, were againſt the Law.

H. 5.

The death of the King diſſolves the Parliament, if Kings ſhould referre to the politick capacity it would

2 *H.* 5. 4 *pars inſtit.* 46.

continue after his death, 4 *pars Inſt.* 46. which proves that the King cannot

not be ſaid to be there when he is abſent, as now he is: there is no *inter regnum* in the Kingdome, the diſſolution of the Parliament by his death, ſhewes that the beginning and end thereof referrs to the naturall perſon of the King, and therefore he may lawfully refuſe the Propoſitions.

2. *H.* 5 *Chap.* 6. to the King onely it belongs to make Leagues with Forraigne Princes? this ſhewes where the ſupreame power is, and to whom the Militia belongs.

8 *H.* 6. *numb.* 57. *Rott. Parl. Cook, H.* 6. 4 *pars inſtit.* 25. No priviledge of Parliament is grantable for treaſon, felony, or breach of the peace; if not to any one Member, not to two, not to ten, not to the major part, 19 *H.* 6. 62. The Law is the inheritance of the King and his people, by which they are ruled, King and people; And the people are by the Law bound to ayd the King, and the King hath an inheritance to hold Parliaments, and in the ayds granted by the Commonalty. If the major part of a Parliament commit treaſon, they muſt not be Judge of it, for no man or body, can be Judge in his own cauſe, and aſwel as ten or any number may commit treaſon, the greater number may aſwell.

The

31 H. 6. 13 Plowd. 334. The King by his Letters Patents may constitute a County palatine and grant Regall rights, this shewes where the supreame power is.

Ed. 4. 17 *Ed. 4. Rot. Parl. numb.* 39. No priviledge of Parliament is grantable for treason, felony, or breach of the Peace, if not for one, not for two, or more, or a major part.

Calvins Case 7 pars fol. 11, 12. The same persons must not be Judge and party. A corporate body can commit no treason, nor can treason be committed against a corporate body, 21 *E.* 4. 13. and 14. but the persons of the men who make that body may commit treason, and commit it against the naturall person of him who to some purposes is a body corporate, but *quatenus corporate* no treason can be committed by or against such a body; that body hath no soule, no life, and subsists onely by the fiction of the Law, and for that reason the Law doth conclude as aforesaid; therefore the Statute of 25 *E.* 3. must be intended of the Kings naturall person, conjoyned with the politique which are inseparable, and the Kings naturall person being at *Holmby*, his politique is there also, and not at *Westminster*; for the politique and naturall make one body indivisible.

Plow. com. 213.

If

If all the people of England should breake the league made with a forraigne Prince, without the Kings consent, the league holds & is not broken, and therefore the representative body is inferiour to his Majesties. 19 Ed. 4 46 22. Rd. 4. Fitz. jurisdiction last placito.

The King may erect a Court of Common pleas in what part of the Kingdome he pleaseth by his letters patents; can the two Houses do the like?

1 *Ed.* 5. *fol.* 2 It cannot be said that the King doth wrong, declared by all the Judges and Serjeants at Law then there. 1 Ed. 5. 1 Ed. 4. 24. 5 Ed. 4. 23

The reason is, nothing can be done in this Common-wealth by the Kings grant or any other act of his as to the Subjects persons, goods, Lands or liberties, but must be according to established Lawes, which the Judges are sworne to observe and deliver betweene the King and his people impartially to rich and poore, high and low; and therefore the Justices and the Ministers of Justice are to be questioned and punished if the Lawes be violated: and no reflection to be made on the King. All Counsellors and Judges for a yeere and three moneths untill the tumults began this Parliament: were all left 2 Pars. instit. 158.

to

to the ordinary cauſe of Juſtice, what hath been done ſithence is notorious.

For great Cauſes and conſiderations
R. 3. an Act of Parliament was made for
1 R. 3. c. 15 the ſurety of the ſaid Kings perſon: if a Parliament were ſo tender of King *Richard* the 3. the Houſes have greater reaſon to care for the preſervation of his Majeſty.

The Subjects are bound by their
Hen. 7 Allegiance to ſerve the King for the
11 H. 7. c. 1 time being, againſt every Rebellion, power and might, reared againſt him within this Land, that it is againſt all Lawes, reaſon, and good conſcience, if the King ſhould happen to be vanquiſhed that for the ſaid deed and true duty and allegiance they ſhould ſuffer in any thing, it is ordained they ſhould not; and all Acts of Proceſſe of Law hereafter to be made to the contrary are to be voyd: This Law is to be underſtood of the naturall Perſon of the King; for his politick capacity cannot be vanquiſhed, nor war reared againſt it.

Relapſers are to have no benefit of this Act.

12 H. 7. 20 It is no Statute, if the King aſſent
4 H. 7. 18 not to it, and he may diſaſſent, this
Hen. 8 proves the negative voyce.
7 H. 7. 14

The

The King hath full power in all causes to doe justice to all men : this is affirmed of the King, and not of the two Houses. 24 H. 8. c. 12 25 H. 8. c. 28

The Commons in Parliament acknowledge no superiour to the King under God, the House of Commons confesse the King to be above the representative body of the Realme.

Of good right and equity the whole and sole power of pardoning treasons, fellonies, &c. belong to the King, as also to make all Justices of Oyer and Terminer, Judges, Justices of the Peace, &c. This Law condemnes the practice of both Houses at this time. 27 H. 8. c. 14 Note.

The Kings Royall Assent to any Act of Parliament signed with his hand, expressed in his Letters Patents under the great Seale, and declared to the Lords and Commons, shall be as effectuall as if he had assented in his owne person ; a vaine Act if the King be virtually in the Houses. 33 H. 8. c. 21

The King is the head of the Parliament, the Lords the principall members of the body, the Commons the inferiour members, and so the body is composed, therefore there is no more Parliament without a King, then there is a body without a head. Dier 38. H. 8 fol. 59. 60.

There

14 H. 8 f 3 There is a Corporation by the Common-Law, as the King, Lords, and Commons, are a Corporation in Parliament, and therefore they are no body without the King.

34 Ed 3 48
1 Ed. 4. 2 The death of the King dischargeth all mainprise to appeare in any Court or to keepe the peace.

2 H. 2. 8
9 H 7. 10
1 Ed. 91. The death of the King discontinues all Pleas by the Common-law, which agreeth not with the virtuall power insisted upon now.

Ed. 6.
2 Ed 6 c. 7 Writs are discontinued by the death of the King; Patents of Judges, Commission for Justices of the Peace, Sheriffs, Escheators, determined by his death: where is the virtuall power?

1 Ed. 6. c. 2 All authority and jurisdiction spirituall and temporall is derived from the King, therefore none from the Houses.

2, 3. Ed. 6. c. 2
11 H. 7. c. 1
Calvins case
see part, Cooke c. 1 Part Inst. 69. His Majesties Subjects, according to their bounden duties, ought to serve the King in his warres, of this side or beyond the Seas, beyond the seas is to be understood for wages: This proves the power of warres, and preparation for warre to be in the King.

5, 6 Ed. c. 11 It is most necessary both for common policy and duty of the Subject, to

o reſtraine all manner of ſhamefull landers againſt their King, which when they be heard, cannot but be o- ible to his true and loving ſubjects, pon whom dependeth the whole u- ity and univerſall weale of the ealme. This condemnes their conti- uing of the weekely Pamphlets, who ave beene ſo foule mouthed againſt is Majeſty.

The puniſhment of all offendors gainſt the Lawes, belongs to the ing, and all juriſdictions do, and of right ought to belong to the King. This leaves all to his Majeſty. *2 Mary. 1 Mar. Pl 2. cap. 2*

All Commiſſions to leavy men for the warre, are awarded by the ing: The power of warre onely elongs to the King. *4, 5 P. & M. c. 3. 2 Eliz. 10 Eliz. Pl. 315*

It belongs to the King to defend s people, and to provide Armes and orce: No ſpeech of the two Hou- s.

Roy ad ſole gouernment de ſes ſubjects rps naturall le Roy & politique ſunt un rps. That is, the king hath the ſole verameht of his Subjects, the bo- politick and the naturall body of e King make one body, and not di- rs, and are inſeperable and indivi- le. *Plow. 234 242. 213 Calvins caſe 7 pars fol. 20 Plow. com. 213*

The body naturall and politique, make

Plow. 934 243, 213. *Calvins* case 7 *part fol.* 12

make one body, and are not to be severed: Ligeance is due to the naturall body, and is due by nature, Gods Law, and Mans Law cannot be forfeited nor renounced by any meanes, it is inseparable from the person.

1 *Eliz. cap.* 1 *Cawdries* case, 5 *part fol.* 2

Every Member of the House of Commons, at every Parliament takes a corporall Oath: That the King is the supreame and onely Governour in all causes in all his Dominions, otherwise no Member of that House; The words of the Law are, In all causes, over all persons.

43 *Eliz.* 3 *part instit. fol.* 6. 2

The said Act of 1 *Eliz.* is but declarative of the ancient Law, *Caudries* Case, *ibid.*

The Earle of *Essex*, and others, assembled multitudes of men to remove Councellors, adjudged Treason by all the Judges of *England*.

39 *Eliz. Hil.* 1 *Iac. ibid.*

To depose the King, or take him by force, to imprison him untill he hath yeelded to certaine demands, adjudged Treason, and adjudged accordingly in the Lord *Cobhams* Case.

39 *Ed. Brad.* case, f. 9. & 16. By all the Judges of England, *ibid* 10. *Eli. Plow.* 316

A rising to alter Religion established, or any Law, is Treason: so for taking of the Kings Castles, Forts, Ports or Shipping, *Brook* treason 24. 3. & 4. *Philip* and *Mary*, *Dier*, *Stafford* Case concerning Scarborough.

The

The Law makes not the servant greater then the Master, nor the Subject greater then the King, for that were to subvert order and measure.

The Law is not knowne but by Usage, and Usage proves the Law, and how Usage hath been is notoriously knowne. *10 Eliz. Plow. 319*

The King is our onely rightfull and lawfull Leige Lord and Soveraigne, we doe upon the knees of our heart adnize constant Faith, Loyalty, and Obedience to the King and his Royall Progeny, in this high Court of Parliament, where all the body of the Realme is either in person, or by representation: We doe acknowledge that the true and sincere Religion of the Church is continued and established by the King. And do recognize, as we are bound by the Law of God and Man, the Realme of *England*, and the Imperiall Crowne thereof doth belong to him by inherent birthright, and lawfull and undoubted succession, and submit our selves and our posterities for ever, untill the last drop of our bloud be spent, to his rule, and beseech the King to accept the same as the first fruits of our Loyalty and faith to his Majesty and his posterity for ever; and for that this Act is not *K. Iames, 1 Iac. cap. 1 9 Ed. 4 fol. 8*

not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their titles to the Crown by the two Houses, but by inherent birth right, and that there can be no Statute without his expresse assent; and destroyes the Chimera of the Kings virtuall being in the Houses.

3 Car. cap. 4
25 Eliz. c. 1

To promise obedience to the Pope or any other State, Prince or Potentate, other then the King, his heyres and successors, is treason; and therefore those persons who call the houses the Estates offend this Law.

K. Charles Collection of Ordinances, fol. 7

Such Bils as his Majesty is bound in conscience and justice to passe, are no Law without his assent.

1 pars ib. fol. 728.

To designe the ruine of the Kings person, or of Monarchy, is a monstrous and injurious charge.

ibid. fol. 865

Ubi lex non distinguit, non est distinguendum, all the aforeland Acts and Lawes do evidently prove the Militia to belong to the King: that the King is not virtually in the two Houses; that the King is not considerable separately in relation to his politick capacity: that the King is not a person trusted with a power, but that it is his inherent birth-right from God, Nature,

Nature and Law, and that he hath not his power from the people: These Lawes have none of those distinctions of naturall and politicke, *abstractum & concretum*, power and person: in *Cæsars* time this Island had Kings, and ever since, which is almost 17 hundred yeares agoe.

No King can be named in any time, made in this Kingdome by the people; A Parliament never made King, for they were Kings before: the Parliaments are summoned by the Kings Writs, which for Knights, Citizens, and Burgesses begins thus: *viz.*

Rex vic. Wilts. Salutem. Quia Nos de avisamento & assensu consilii nri, pro quibus. arduis & urgentib. negotiis nos statum & defensionem Regni nri. Ang. & Eccles. Anglie. concernentibus quoddam Parliamentum nrum, apud B. teneri ordinavimus & ibid. cum Prelatis Magnatib. & proceribus dicti Regni nri. Colliquium habere & tractatum, tibi precipimus firmiter injungendo quod facta Proclamatione in

prox. Comitatu tuo post receptionem ejusd. Brevis, duos Milites gladiis cinctos, &c. eligi faceas ad faciendum & consentiendum hiis quæ tunc ibidem de Communi Concilio uro. Angl. foventi Deo contigerit ordinari super Negotiis ante dictis, ita quod pro defectu potestatis hujusmodi seu propter improvidam electionem Mileum, Civium, & Burgensium præd. dicta negotia ura, infecta non remanerent.

4 pars Inst. 41.

The King is *Principium, caput & finis Parliamenti*, the body makes not the head, nor that which is *posterior*, that which is *prior*, *consilium non est Præceptum, consiliarii non sunt Præceptoris*, for Counsell to compell a consent, hath not been heard of to this time in any age, and the House of Commons, by the Writ, are not called *ad consilium*; the Writs to the twelve Judges, Kings Counsell, twelve Masters of the Chancery are *consilium impensuri*, and so of the Peeres. The Writs for the Con minalty, *Ad faciendum & consentiendum*: Which shewes what power the representative body

a pars Instit. fol. 3. & 4

hath

hath, they have not power to give an Oath; neither doe they claime it.

The Oath of the Iustices 18 of E. 3. amongs Statutes of that yeare.

The King at all times, when there is no Parliament, and in Parliament is assisted with the advice of the Judges of the Law, 12 in number, for *England* at least hath two Sergeants when fewest; an Attorney and Solicitour, twelve Masters of the Chancery, his Councell of State consisting of some great Prelates, and other great Personages, versed in State affaires, when they are fewest to the number of twelve. All these persons are alwaies of great substance, which is not preserved, but by the keeping of the Law; The Prelates versed in divine Law, the other Grandees in affaires of State, and managery of Government; The Judges, Kings Sergeants, Attorney, Solicitour, and Masters of the Chancery versed in the Law and Customes of the Realme: All sworne to serve the King and his people justly and truly; the King is also sworne to observe the Lawes, and the Judges have in their Oath a clause, that they shall doe common right to the Kings people, according to the established Lawes, notwithstanding any command of the King to the contrary, under the Great Seale

or otherwise, the people are safe by the Lawes in force without any new: The Law finding the Kings of this Realme assisted with so many great men of Conscience, Honour, and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Grants in his Minority, (there are many great persons living hold many a thousand pounds a yeare by Patents from *Edward* the sixth, passed when he was but ten yeares of age) not to be bound to any Law to his prejudice, whereby he doth not binde himselfe, power of warre and peace, coyning of Mony, making all Officers, &c. The Law for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all Kings have enjoyed them till 3 *Nov.* 1640.

It will be said notwithstanding all this fence about the Lawes, the Lawes have been violated, and therefore the said powers must not hold, the two Houses will remedy this.

The answer to this is evident:

There

There is no time past, nor time present, nor will there be time to come, so long as men manage the Law; but the Lawes will be broken more or lesse, as appeares by the Story of every age. All the pretended violations of this time were remedied by Acts, to which the King consented before his departure 10 *Jan* 1641. being then driven away by Tumults: And the Houses for a yeare and almost three Moneths, from 3 *Nov.* 1640. to 10 *Jan.* 1641. as aforesaid, being a yeare and almost three Moneths, had time and liberty to question all those persons who are either causes or instruments of the violation of any of the Lawes.

Examine how both Houses remedied them in former times. First, touching Religion, what hath been done this way? Both Houses in *Henry* the eights time tendred to him a Bill to be passed called commonly the Bill of the six Articles, this was conceived by them to be a just and a necessary Bill: Had not *Henry* the eight done well to have refused the passing of this Bill? Both Houses tendred a Bill to him to take the reading of the Scriptures from most of the Laity: Had not King *Henry* the

eight deserved much praise to reject this Bill? In Queene *Maries* time both Houses exhibited a Bill to her to introduce the Popes power, and the Roman Religion; had not Queene *Mary* done well to have refused this Bill? Many such instances may be given, The two Houses now at Westminster I am sure will not deny but the refusall of such Bills have beene just, the King being assisted as aforesaid, and why not so in these times?

For the Civill Government, what a Rill did both Houses present to *Richard* the third, to make good his Title to the Crowne; had it not beene great honour to him to have rejected it? What Bills were exhibited to *Henry* the eight by both Houses for bastardizing of his Daughter *Elizabeth*, a Queene of renowned memory, to settle the Crowne of this Realme, for default of Issue of his body, upon such persons as he should declare by his Letters Patents, or his last Will, and many more of the like? had not this refusall of passing such Bil's magnified his vertue, and rendered him to Posterity in a different Character from what he now hath?

And by the experience of all times, and the consideration of humane frailty,

frailty, this concluſion is manifeſtly deduced, that it is not poſſible to keep men at all times (be they the Houſes, or the King and his Councell) but there will be ſometimes ſome deviation from the Lawes, and therefore the conſtant and certaine powers fixed by the ancient Law muſt not be made voyd, and the Kings Miniſters; the Lawes doe puniſh where the Law is tranſgreſſed, and they onely ought to ſuffer for the ſame.

In this Parliament the Houſes exhibited a Bill to take away the ſuffrages of Biſhops in the upper Houſe of Parliament, and have fithence agreed there ſhall be no more Biſhops at all, might not the King if he had ſo pleaſed have anſwered this Rill with *Le Roys' aviſera*, or *ne veult?* it was againſt *Magna Charta*, *Articuli Cleri* and many other Acts of Parliament. And might have farther given theſe reaſons, if it had ſo pleaſed him for the ſame: Firſt, that this Bill deſtroyes the Writ whereby they are made two Houſes of Parliament, 14 *Hen.* 7. *fol.* 22. *Eveſq; eſt ſignior de grand honneur*, the King in the Writ being *cum prælatis colloquium habire*: Secondly, they have been in all Parliaments ſince we had any, and voted, but in

such wherein they themselves were concerned: And there have been Bishops here sithence we were Christians, and the Fundamentall Law of the Kingdome approves of them: If any of them were conceived offensive, they were left to Justice, and his Majesty would put in inoffensive men in their places; but sithence his Majesty hath passed the Bill for taking away their Votes in Parliament, it is a Law that bindes us so farre.

Upon the whole matter the Law hath notably determined that Bills agreed by both Houses, pretended to be for the publick good, are to be judged by the King, for in all Kings Reignes Bils have been preferred by both Houses, which always are pretended to be for the publique good, and many times are not, and were rejected with *Roy's aviſera*, or *Roy ne veult*.

This Parliament began the 3 of *Novemb.* 1640. before that time in all the Kings reign no armed power did force any of the people to doe any thing against the Law; what was done was by his Judges, Officers, Refers, and Ministers from that time untill the 10 of *Ia.* 1641. when the King went from *London* to avoyd the danger of frequent tumults, being a yeare and 3 months, Privie Counsellors and all his Justices & Ministers were left to the Justice of the Law, there wanted not time to punish punishable men.

The

The Sphere of the House of Commons is to represent the grievances of the Countrey, to grant aydes for the King upon all fit occasions extraordinary, to assent to the making or abrogating of Lawes: The Orb of the House of Lords to reforme erroneous judgements given in the Kings Bench, to redresse the delayes of Courts of Justice, to receive all Petitions, to advise his Majesty with their Councell, to have their Votes in making or abrogating of Lawes, and to propose for the common good, what they conceive meet.

Lex non cogit ad impossibilia, Subjects are not to expect from Kings impossible things, so many Judges, Councellours, Sheriffes, Justices of the Peace, Commissioners, Ministers of State, that the King should overlooke them all, cannot be, it is impossible.

The King is virtually in his ordinary Courts of Justice, so long as they continue his Courts, their charge is to administer the Lawes in being, and not to delay, deferre, or sell Justice for any Commandment of the King. We have Lawes enough, *Instrumenta boni sæculi sunt boni viri*, good Ministers, as Judges and Officers are many times wanting, the-

Houſes propoſe new Lawes, or abrogation of the old, both induce novelty; the Law for the reaſons aforeſaid, makes the King the onely Judge, who is aſſiſted therein by a great number of grave, learned, and prudent men, as aforeſaid.

For the conſiderations aforeſaid the Kings Party adheared to him, the Law of the Land is their Birthright, their Guide, no offence is committed where that is not violated; they found the Commiſſion of Array warranted by the Law; they found the King in this Parliament to have quitted the Ship-money, Knighthood-money, ſeven Courts of Juſtice, conſented to a Triennial Parliament, ſetled the Forreſt bounds, tooke away the Clearke of the Market of the houſhold, truſted the Houſe with the Navy, paſſed an Act not to diſſolve this Parliament without the Houſes aſſent; no people in the world ſo free if they could have been content with Lawes, Oathes, and reaſon, and nothing more could or can be deviſed to ſecure us, neither hath been in any time.

Notwithſtanding all this we found the King driven from London by frequent

frequent tumults, that two thirds and more of the Lords had disserted the House for the same cause, and the greater part of the House of Commons left that House also for the same reason; new men chosen in their places against **Law**, by the pretended Warrant of a **counterfet Seale**, and in the Kings name against his consent, leavying Warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land; devised new Oathes to oppose Forces raised by the King, nor to adhere to him, but to them in this Warre which they call the **Negative Oath**, and the **Vow and Covenant**.

By severall wayes never used in this kingdome, they have raised Monies to foment this Warre, and especially to inrich some among them; namely, first, **Excise**, secondly, **Contributions**, thirdly, **Sequestrations**, fourthly, **Fift-parts**, fiftly, **Twentieth-parts**, sixtly, **Weak-money**, seventhly, **Sale of Plundered goods**, eightly, **Loanes**, ninthly, **Benevolences**, tenthly, **Collections**,

cus upon their fast dayes, eleventhly, new Impositions upon Merchandizes, twelfthly, Guards maintained upon the charge of private men, thirteenthly, Late Subsidies at one time, fourteenthly, Compositions with such as they call Delinquents, fifteenthly, Sale of Bishops Lands, &c.

From the Kings Party meanes of subsistance are taken; before any Indictment, their Lands seized, their goods taken, the Law allowes a Traytor or Fellon attainted, *Necessaria sibi & familiæ suæ invitus & vestus*, where is the Covenant? Where is the Petition of Right? Where is the liberty of the Subject?

3 R. 3. cap. 3. Britt. li. 3 c 8. Stamford, 192. Sir Ger. Fleetwoods Case. 8 pars Cook, 7 H. 4 last leafe.

First, we have ayded the King in this Warre contrary to the Negative Oath, and other Votes: Our Warrant is the twenty fifth of *Edward* the third the second Chapter, and the said resolutions of all the Judges.

4 pars Instit. 225.

Secondly, we have maintained the Commission of Array, by the Kings Command, contrary to their Votes: We are warranted by the Statute of the fifth of *Henry* the fourth, and the judgement of Sir *Edward Cooke*, the Oracle of the Law, as they call him.

2 Instit. 696. The Law so at the Edition of that booke. Hutton and Crooke

Thirdly, wee maintained Arch-

Bishops

Bishops and Bishops, whom they would suppresse. Our warrant is, *Magna Charta*, and many Statutes more.

Fourthly, we have maintained the Booke of Common-prayer, they suppresse it: Our warrant is five acts of Parliament in *Edward* the sixt, and Queene *Elizabeths* time, 5 *Pelche* 35. *Elizabeth inter placita Coronæ in Banco Regis*. New booke of Entries, *fol.* 252. *Penry*, for publishing two scandalous Libels against the Church Government, was indicted, arraigned, attainted, and executed at Tyburne.

Fiftly, we maintained the Militia of the Kingdome to belong to the King, they the contrary: Our warrant is the Statute of the seventh of *Edward* the first, and many Statutes, sithence; the practise of all times, and the Custome of the Realme.

Sixthly, we maintained the counterfeiting of the great Seale to be high Treason, and so of the usurpation of the Kings Forts, Ports, Shipping, Castles, and his Revenue, and the coyning of Money, against them: Wee have our warrant by the said Statute of the twenty fifth of *Edward* the third, Chapter the second, and divers others.

thers since, and the practise of all times.

Seventhly, we maintaine that the **King is the onely supreme Governour in all causes**: They, that his Majesty is to be governed by them: Our warrant is the Statutes of the first of Queene *Elizabeth*, Chapter the first; and the fifth of Queene *Elizabeth* the first.

Eightly, We maintaine that the **King is King by an inherent birth-right, by nature, by Gods Law, and by the Law of the Land.** 9 Ed. 4. fol. 4. They say his Kingly right is an Office upon trust: Our warrant is the Statute of the first of King *James*, Chapter the first. And the resolution of all the Judges of *England* in *Calvins* Case.

Ninthly, wee maintaine that the **politick capacity is not to be severed from the naturall.** They hold the contrary: Our warrant is two Statutes (*viz.*) *exilium Hugonis in Edward* the seconds time, and the first of *Edward* the third Chapter the second, and their Oracle who hath published it to Posterity, that **it is damnable, detestable, and execrable Treason,** *Calvins* Case *yeers* 7. *fol.* 11.

Tenthly, wee maintaine that who

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aydes the King at home or abroad, ought not to be molested or questioned for the same, they hold and practise the contrary; Our warrant is the Statute of the eleventh of *Henry* the seventh, Chapter the first.

Eleventhly, wee maintaine that the King hath power to disassent to any Bill agreed by the two Houses: which they deny: Our warrant is the Statute of the second of *Henry* the fifth, and the practice of all times, the first of King *Charles*, Chapter the seventh, the first of King *James*, Chapter the first.

Twelfthly, wee maintaine that Parliaments ought to be holden in a grave and peaceable manner, without tumults; They allowed multitudes of the meanest sort of the people to come to *Westminster* to cry for justice when they could not have their will, and keepe guards of armed men to wait upon them: Our warrant is the Statute of the seventh of *Edward* the second, and their Oracle. Coll. of Ord. *fol.* 31.

Thirteenthly, wee maintaine that there is no State within this Kingdome but the Kings Majesty, and that to adhere to any other State within this Kingdome is high Treason: Our warrant is the Statute

one of the third of King *James*, Chapter the fourth, and the twenty third of Queene *Elizabeth*, Chapter the first.

Fourteenthly, we maintaine that to levy a warre, to remove Counsellours, to alter Religion, or any Law established, is high Treason. They hold the contrary: Our warrant is the resolution of all the Judges of *England* in Queene *Elizabeths* time, and their Oracle agrees with the same.

Fifteenthly, wee maintaine that no man should be imprisoned, put out of his Lands, but by due course of Law, and that no man ought to be adjudged to death but by the Law established, the Customes of the Realme, or by Act of Parliament. They practise the contrary in *London*, *Bristol*, *Kent*, &c. Our warrant is *Magna Charta*, Chapter the twenty ninth, the Petition of Right, the third of King *Charles*, and divers Lawes there mentioned.

We of the Kings party, did and do detest Monopolies, and Shipmoney, and all the grievances of the people as much as any men living, wee do well know that our estates, lives and fortunes are preserved

ved by the Lawes, and that the King is bound by his Lawes, we love Parliaments, if the Kings Judges, Councell, or Miniſters have done amiſſe, they had from the third of *November*, 1640. to the tenth of *January*, 1641. time to puniſh them, being all left to juſtice, **where is the Kings fault**.

The Law ſaith **the King can doe no wrong**, that he is *medicus Regni pater patriæ ſponſus Regni qui per connubium*, is eſpouſed to his Realme at his Coronation; The King is Gods Lieutenant, and is not able to doe an unjuſt thing, theſe are the words of the Law. 11 part Cooke Reports Magdalen Colledge Caſe.

One great matter is preteuded, that the people are not ſure to enjoy the Acts paſſed this Parliament. A ſucceeding Parliament may repeale them; The objection is very weake; a Parliament ſucceeding that may repeale that repealing Parliament: That feare is endleſſe and remedileſſe, for it is the eſſence of Parliaments being compleat, and as they ought to be, of Head, and all the Members, to have power over Parliaments before; Parliaments are as the times are; If a turbulent faction prevailes the Parliaments are wicked as appeares by the examples recited before of extream

wicked

wicked Parliaments; if the times be sober and modest, prudent and not biassed, the Parliaments are right good and honourable, and they are good medicines and salves; but in this Parliament *excessit medicina modum*.

In this cause and warre betweene the Kings Majesty, and the two Houses at *Westminster*, what guide had the Subjects of the Land to direct them but the Lawes? What meanes could they use to discerne what to follow, what to avoid, but the Lawes? The King declares it Treason to adhere to the Houses in this warre: The Houses declare it Treason to adhere to the King in this warre: The Subjects for a great and considerable part of them (Treason being such a crime as forfeits life and estate, also renders a mans Posterity base, beggerly, and infamous) looke upon the Laws, and finde **the Letter of the Law requires them to assist the King**, as before is manifested; was ever Subject criminally punisht in any age or Nation for his pursuit of what the Letter of the Law commands?

The Subjects of the Kingdome finde the distinction and interpretation now put upon the Lawes of *Abstractum & Concretum*, Power and Person,

on, body politick, and naturall, perſonall preſence and virtuall, to have beene condemned by the Law; and ſo the Kings Party had both the Letter of the Law, and the interpretation of the Letter cleared to their judgments, whereby they might evidently perceive what ſide to adhere to, what ſatisfaction could modeſt peaceable and loyall men more deſire?

A verbo legis in criminibus & pœnis non eſt recedendum, hath been an approved maxime of Law in all ages and times: If the King be King and remaine in his Kingly Office (as they call it) then all the ſaid Lawes are againſt them without colour; they ſay the ſaid Lawes relate to him in his Office, they cannot ſay otherwiſe, they make Commiſſions and Pardons in the Kings name, and the perſon of the King and his body politick cannot, nor ought to be ſevered as hath beene before declared: And the Members of both houſes have ſworne conſtantly in this Parliament that the King is the onely ſupreme Governour in all cauſes, over all perſons at this preſent time.

Coll. of Ordinances, 777.

5 Eliz. cap. 1.
1 Eliz. cap. 1.

For what of verball or perſonall commands of the King which is objected,

jected; we affirme few things to be subject thereto by the Law: But his Majesties Command under his Great Seale, which in this warre hath been used by the Kings Command for his Commission to leavie and array men, that is no personall command (which the Law in some cases disallowes) but that is such a command, so made, as all men hold their Lands by, who hold by Patents; all Corporations have their Charters which hold by Charters, and all Judges and Officers their places and callings.

Obj. It is Objected, the King cannot suppresse his Courts of Justice, and that this warre tended to their suppression.

Sol. The answer is, the King cannot nor ought to suppresse Justice, or his Courts of Justice, nor ever did; but Courts of Justice by *abuser or non user* cease to be Courts of Justice; when Judges are made, and proceedings in those Courts holden by others then Judges made by the King, and against his command under the Great Seale, and his Majesty is not obeyed, but the Votes of the Houses, and his Judges breaking that condition in Law, of trust and loyalty, implyed in their Patents, are no longer his Judges;

7 part. The Earle of Westmerlands Case. 3 Eliz. Dier 165. 7 part Cooke. The case of discontinuance of Processe.

ges; they obey and exercise their places by vertue of Writs and Proceſſes under a counterfeit Seale: The King only can make Judges, the twenty ſeventh of *Henry* the eighth, Chapter the twenty fourth, **Juſtices of the Peace**, &c. The Kings Patents makes Judges: The chiefe Juſtice of the Kings Bench is made by the Kings Writ onely of all the Judges. 28 *H. 8.* c. *Dier* 11.

The **Great Seale** is the key of the kingdome, and meet it is that the **King ſhould have the key of his Kingdome about him**; which confutes their ſaying that the King got the Seale away ſurreptitiouſly. *Articuli ſuper chartas cap* 5. 2 *Inſt. juſtic.* 552.

The King, and he only may remove his Courts from *Weſtminſter* into ſome other place: at *Yorke* the Termes were kept for ſeven yeares, in *Edward* the firſt's time; but for the Court of Common Pleas, the place muſt be certaine; for the Kings Bench and Chancery, the King by the Law may command them to attend his Perſon alwaies if it ſeeme ſo meet unto him; but the removing of the Common Pleas muſt be to a place certaine, and ſo notified to the people. *Britton. fol.* 23.

All the Bookes of Law in all times agree, that the King may grant eoun-

ſance

sance of all Pleas at his pleasure within any County or Precinct to be holden there onely, and remove the Courts from *Westminster* to some other place (for the Common Pleas, the place must be certaine, and so notified to the people) and adjourne the Termes as he sees cause: All which the two houses have violated.

6 *H.* 7. 9.
6 *Eliz. Dier.* 226.

Some

Some ſeeming objections of Maſter Prinn's, *ſcattered in divers books anſwered, and the truth thereby more fully cleered.*

THE firſt of *Henry* the fourth, revived the Statute of the eleventh of *Richard* the ſecond, and repeales the one and twentieth of *Richard* the ſecond, whereby certaine perſons were declared Traytors to the King and kingdome; being of the Kings Party, by 11 *Rich.* 2. 1 *Ob.*

True, but note, the eleventh of *Richard* the ſecond, a Parliament beſet with 40000. men, and the King aſſents to it, ſo an Act, and beſides the firſt of *Henry* the fourth declares, that the Treaſons mentioned in the Act of the eleventh of *Richard* the ſecond, being but againſt a few private men, ſhall not be drawne into example, and that no Treaſon ſhould be but ſuch as the twenty fifth of *Edward* the third declares: All theſe are Acts paſſed by the King, and the three Eſtates, nor to be drawne into example in a tumultuous time, by a beſieged Parliament, with an Army, and *Sol.* 9 *Ed.* 4. *fol.* 80.

Henry

Henry the fourth being an Usurper makes that Act of the first of *Henry* the fourth to secure himselfe: Also what is this to the Votes of the two Houses onely at this time?

2 Ob. The Court of Parliament is above the King, for it may avoyd his Charters, Commissions, &c. granted against the Law.

And the Law is above the King.

Sol. By the same reason you may say that the Courts of Chancery, or any of the Courts of Law at *Westminster* are above the King, for they make of no effect the Kings Charters, which are passed against the Law; and the King is subject to Law, and sworne to maintaine it. Againe, it is no Parliament without the King, and the King is the head thereof, he is *principium caput, & finis* of a Parliament, as *Modus tenendi Parliament*, hath it, and two houses onely, want *principium caput & finis* of a Parliament, and it is a sorry Parliament that wants all these. And therefore to say that Parliaments are above the King, is to say the King is above himselfe.

3 Ob. The Parliament can enlarge the Kings Prerogative, therefore it is above him.

Sol. If the King assent, otherwise not;

and

and then it is an Act of Parliament, and otherwise no Act.

Bracton saith, God, the Law, and the 4 Ob.
Kings Court, (*viz.*) his Earles and Barons are above the King, *viz.* in Parliament, as Mr. *Pryane* expounds it,

Where is then the House of Com- Sol.
mons? Indeed, take God, the Law, and Earles and Barons together, it is true; but to affirme that the Earles and Barons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferiour member is above the head, is hard to conceive; besides, that position destroyes all Mr. *Prynes* discourse, who attributes much to the House of Commons.

The King is but one of the three E- 5 Ob.
states of Parliament, and two are greater then one; therefore above.

The Legs, Armes, and Trunke, of Sol.
the body are greater then the Head, and yet not above, nor with life without it; the argument holds for quantity, but not for quality; and in truth, the King is none of the three Estates but above them all; the three Estates are, the Lords Spirituall, the Lords Temporall, and the Commons; *Coke*, their Oracle, in his Chap. of Parl. *f.* 1

In Corporations, the greater num-

6 Ob. ber of voyces make all the Acts of the Corporation valid; therefore so in Parliament.

Sol. By this reason the Kings assent is needlesse, and to no end: and all the Acts of Parliament formerly mentioned, and Law-bookes have quite mistaken the matter, which with unanimous voyce requires the Kings assent as necessary: besides, the Corporations are so constituted by the Kings Charters, and the greater number of Votes shall make their Acts valid.

7 Ob. The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not there.

Sol. In his other Courts of Justice he hath no voyce, he is none of the Judges, in the Parliament he hath; if his presence be not necessary, his voyce is not, nor his assent.

8 Ob. Soveraign power of Parliaments. 46 74. The originall prime legislative power of making Lawes, to binde the Subjects and their posterity, rests not in the King, but in the Kingdome and Parliament, which represents it.

Sol. Master *Prime* in the same lease affirmes, and truly, that the Kings assent is generally requisite to passe Lawes and ratifie them; the

King

King is the Head of the Kingdome and Parliament, how then can a Body act without a Head?

A major part of a Corporation bindes, therefore the major part in Parliament, and so of by Lawes. 9 Ob.

The Corporation is so bound, either by the Kings Charters, or by prescription, which sometimes had the Kings concession; but prescription, and Law, and practise, alwaies left the King a negative voyce. Ed.

The King cannot alter the Bills presented to him by both Houses, g°. 10 Ob.

True, but the King may refuse them. Sol.

Acts of Parliament and Lawes ministred in the Reignes of Usurpers, binde rightfull Kings, g° 11 Ob.

What is this to prove the two Houses power only, which is the question? Sol.

A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytours and Rebells to the Regent King (having renounced the true King) when the rightfull King is restored, may be punished by him for their Treason against the Usurper: But here is a King still in both cases, and the proceeding 9 Ed.

ceedings at Law holds, the Judges having their Patents from the being Kings, in the Reignes of Kings, *de facto* or *de jure*, for all Kings are bound, and sworne to observe the Lawes.

12 Co. A King dies without Heire, is an Infant, *non compos mentis*, &c. the two Houses may establish Lawes, g°

Sol. There is no *Inter-regnum* in England, as appeares by all our Books of Law; and therefore the dying without Heire is a vaine supposition, and by their principle he is considerable in his politick capacity, which cannot dye at all: The Protectour, assisted by the Councell of the King at Law, his twelve Judges, the Councell of State, his Attorney, Solicitor, and two Sergeants at Law, his twelve Masters of the Chancery, hath in the Kings behalfe, and ever had a Negative voyce; but what is this to the present question? We have a King of full age, of great wisdome and judgement; the power of the two Houses in such a case to be over the King cannot be showne.

13 Co. The King cannot dis-assent to publique and necessary Bills for the common good, g°

Sol. Nor ever did good King; but who shall

ſhall be judge, whether they be publique and neceſſary? The *major* part in either of the Houſes, for paſſing of Bills ſo pretended, may be but one or two voyces, or very few, and perhaps of no judicious men; is it not then fitter or more agreeable to reaſon, that his Majeſty and Councell of State, his twelve Judges, his Sergeants, Attorney, and Solicitor, twelve Maſters of the Chancery, ſhould judge of the conveniency and benefit of ſuch Bills for the publick good, rather then a *minor*, (of which ſort there may be in the Houſes) or a weake man, or a few, who oftentimes carry it by making the *major* part, which involves the conſent of all? Let reaſon determine.

The Kings of *England* have been elective; and the King by his Coronation Oath is bound to maintaine *juſtas leges & conſuetudines quas vulgus elegerit*, &c. 14 Ob.

Bogery hath been in the Kingdome, and therefore to continue it ſtill, will not be taken for a good argument; when things are ſetled for many ages, to looke back to times of confuſion is to deſtroy all repoſe: The Act of Parliament, of the firſt of K. *James*, Chapter the firſt, and all our Sol.

extant Lawes say, that the Kings Office is an heritage inherent in the bloud of our Kings, and their Birthright.

1 *El.* c. 1 And Usurpers that come in by the consent of the people, are Kings *de facto*, but not *de jure*, as appeares by the Acts of Parliament declaring them so; and by all our Law-bookes, and the fundamentall constitution of the Land, Regall power is hereditary and not elective.

3 *Hen.* 7 For the words (*vulgus elegerit*) if *vulgus* be applyed to the House of Commons, they of themselves can make no Lawes: The Peeres were never yet termed *vulgus*; but allowing they be so called, the Lawes to be made be just, and who is fit to judge thereof, is before made evident.

15 *Ed.* Customes cannot referre to future time, and both are coupled, Lawes and Customes.

Princes have been deposed, and may be by the two Houses, g^a

Sel. The deposers were Traytours, as appeares by the resolution of all the Judges of *England*; *Coke*, Chap. Treason, in the second part of the Institutes: And never was King deposed but in tumultuous and mad times, and by the power of Armies,

and

and they who were to be the succeeding Kings in the head of them, as *Edward* the third, and *Henry* the fourth.

The appeale to the Parliament for errours in Judgements in all Courts is frequent. 16 Ob.

This is onely to the House of Lords, and that is not the Parliament; the House of Commons have nothing to doe therewith; and in the House of Peeres, if a Writ of Error be brought to reverse any judgement, there is first a Petition to the King for the allowance thereof, and the reason of the Law in this case is, for that the Judges of the Land all of them, the Kings Councell, and twelve Masters of the Chancery assist there, by whose advice errronious judgements are redressed. Sol.

The Parliaments have determined of the rights of Kings, as in *Henry* the sixts time, and others, and Parliaments have bound the succession of Kings, as appeares by the Statute of the thirteenth of Queene *Elizabeth*, Chapter the first: And the discent of the Crowne is guided rather by a Parliamentary Title then by common Law. 17. Ob.

If this objection be true, that the Sol.

Title to the Crowne is by Parliament, then we had no Usurpers, for they all had Parliaments to backe them; yea, Richard the third, that Monster. All our Bookes of Law say they have the Crowne by discent, and the Statutes of the Land declare, that they have the same by inherent birth-right. And the Statute of the thirteenth of Elizabeth, the first Chapter, was made to secure Queene Elizabeth against the Queene of Scots, then in the Kingdome, claiming the Crowne of England, and having many adherents: And that Statute to that end affirmes no such power in the two Houses (which is the question) but in Queene Elizabeth, and the two Houses; which makes against the pretence of this time.

Master Prynne, *fol.* 104 of his booke, intituled, the Parliaments supreme power, &c. Objecting the Statute of the first of Queene Elizabeth, and his owne Ourles, that the King is the onely supreame Governour of this Realme; Answers, The Parliament is the supreme power, and the King supreme Governour: And yet there he allowes him a Negative Voyce; and *fol.* 107. confesseth,

that

that Acts of Parliament translated the Crowne from the right Heires at Common Law, to others who had no good Title, then the Parlimentary Title makes not the King so powerfull in truth, that it escapes from a man unawares: To make a distinction between supreame Governour, and supreame power, is very strange, for who can governe without power?

The King assembles the Parliament by his Writ, adjournes, prorogues, and dissolves the Parliament by the Law at his pleasure, as is evident by constant practise, the House of Commons never sate after an adjournment of the Parliament by the Kings Command: where is the supreame power? Vide Speed. 645. 1 par. Instit. 27. & 2.

The King by his Oath is bound to deny no man right, much lesse the Parliament, to agree to all just and necessary Lawes proposed by them to the King. This is the substance of the discourse against the Kings Negative voyce. 18 Ch.

The King is so bound as is set downe in the Objection; but who shall judge whether the Bill proposed be just and necessary? For all that they do propose are so pretended and

carried in either House, sometimes by one or two Voyces; or some few as aforesaid, and certainly it hath been shewen, the King, his Counsell of State, his Judges, Sergeants, Attorney, Sollicitor, and twelve Masters of the Chancery can better judge of them, then two or three, or a few more.

Mr. Prynne, *fol.* 45. In his Booke of the Parliaments interest to nominate Privy Councellors, calleth the opinion of the Spencers to divide the Person of the King from his Crowne, a strange opinion, and cites Calvins Case, but leaves out the conclusions therein mentioned, *fol.* 11. Master Prynne saith there, But let this opinion be what it will; without the Kings Grace and Pardon it will goe very farre, and two Acts of Parliament there mentioned are beyond an opinion: And in his Book of the opening of the Great Seale, *fol.* 17. The Parliament hath no jurisdiction to use the Grear Seale for Pardons Generall or Particular. Where is the supreme power then?

Calvins case 7 part, fol. 11.

17. Ob.

Mr. Prynne (opening of the Seale) pag. 19. saith, the Noblemen and State, the day after the Funerall of King Henry the third (King Edward

ward the first his Sonne being in the Holy Land) made a new Great Seale, and Keepers of the same; And in Henry the sixts time, in the first yeare of his Reigne, the like was done in Parliament.

A facto, ad jus, is no good Argument, for that in Edward the firsts time it was no Parliament, for King Henry the third was dead, which dissolved the Parliament, if called in his time, and it could be no Parliament of Edward the firsts time, for no Writ issued to summon a Parliament in his Name, nor could issue but under that New Seale, it was so suddainely done after Henry the thirds death, King Edward the first being then in the Holy Land, it was the first yeare of his Reigne, and no Parliament was held that yeare, nor the second yeare of his Reigne; The first Parliament that was in his Reigne, was in the third yeare of his Reigne, as appeares by the printed Acts: Also the making of that Seale was by some Lords then present; What hand had the Commons in it? Concerning the Seale made in Henry the sixths time, the Protector was Vice-Roy according to the course of Law, and so the making

Sel.

of

of that Seale was by the Protector in the Kings name, and that Protector, Humphrey Duke of Glocester, as Protectour, in the Kings Name sommoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainely, for that Parliament was in the first of Henry the sixth, and the first holden in his time, and power given by Commission to the said Duke, then Protector, to summon that Parliament, Pryane, *ibid. fol.* 19. But the new counterfeit Seale was made when the King was at Oxford, in his owne Kingdome, and not in the holy Land.

29. Ob. Mr. Pryne in his Booke of the two Houses power to impose Taxes, restraines Malignants against any *Habeat Corpus, &c.* saith, that the Parliament is above *Magna Charta*, and *fol.* 15. *ibid.* The Parliament hath power over *Magna Charta* to repeale the same when there is cause.

Ibid. This Argument supposeth that they have the Kings power, which hath appeared formerly they have not: But suppose they had, *Magna Charta* containes many Morall Lawes, which by the Law of the Land a Parliament cannot alter, 21 H. 7. 2.

D. and Student, 2 Dialogue. For example, it saith cap. 11. Justice shall not be sold, delayed, nor denyed to any man; but by this Argument the Parliament may make Law to delay, deny, and to sell Justice, which surely is a very ill position to maintaine.

What they would have, doth now by the Propositions sent to Hellcastle to his Majesty appeare, whereby they would have him divest himselfe, and settle in them all his Kingly power by Sea and Land, and of themselves to have power, without him, to lay upon the people of this Land what taxes they thinke meet, to abolish the Common prayer-booke, to abolish Episcopacie, and to introduce a Church Government not yet agreed, but such as they shall agree on.

His Majesty finding a prevailing party in both Houses to steere this course, and being chased away with Tumults from London, leaves the Houses for these Reasons, (viz.)

First, because to alter the Government for Religion, is against the Kings Oath:

Secondly, against these Oaths: For every of them hath sworne in this Parliament, That His Majesty

is

is the onely supreme Governour in Causes Ecclesiasticall and over all persons.

Thirdly, this course is against *Magna Charta*, the 1. Chap. and the last. *Salve sint Episcopis omnes libertates suæ*, Confirmed by thirty two Acts of Parliament: and in the two and fortieth of Edward the third, the first Chapter enacts, if any Statute be made to the contrary, it shall be holden for none: and so it is for judgements at Law, in the 25 of Edward the 1. chap. 1. 2. The great Charter is declared to be the Common Law of the Land.

Fourthly, they endeavour to take away by their Propositions, the Government of Bishops, which is as ancient as Christianity in this Land, and the Books of Common prayer settled by five Acts of Parliament, and compiled by the Reformers and Martyrs, and practised in the time of four Princes.

Fifthly, these Propositions taking away from his Majesty all his power by Land and Sea, rob him of that which all his Ancestors, Kings of this Realme, have enjoyed: That enjoyment and usage makes the Law, and a right by the same to his Majesty.

They

They are against their owne Declaration made this Parliament, (viz.) to maintain his Royall Person, Honour, and Estate; They are against their Covenant, which doth say, that they will not diminish his just power and Greatnesse.

For these reasons his Majesty hath left them, and as is beleeved, will refuse to agree to the said Propositions, as by the fundamentall Law of the Land he may (having a Negative Voice) to any Bils proposed.

The result of all is upon the whole matter: That the King thus leaving of the Houses, and his deniall to passe the said Propositions, are so far from making him a Tyrant, or not in a condition to governe, at the present; that thereby he is rendred a just, Magnanimous, and pious Prince: so that by this it appeares clearely to whom the Miseries of these times are to be imputed. The remedy for all, is, an Act of Oblivion, and a Generall Pardon.

God save the King.

DAVID JENKINS, *now Prisoner in the Tower:*

28 *Aprilis*, 1647. [The

The Vindication of Judge Jenkins Prisoner in the Tower, the 29 of April, 1647.

I Was convened upon Saturday the tenth of this moneth of *April* before a Committee of the House of Commons, wherein Master Coke had the Chaire; and I was there to be examined upon some questions then to be propounded to me; to which questions I refused to give any other answer then that which was set downe in a paper I then delivered to the said Mr. Coke, which followeth in these words:

Gentlemen, I stand committed by the House of Commons for High Treason, for not acknowledging, nor obeying the power of the two Houses, by adhering to the King in this warre. I deny this to be Treason, for the supreame and onely power by the Lawes of this Land is in the King: If I should submit to any examination derived from your power, which by the Negative Oath stands in opposition to the Kings power, I shall

should construe the power to be in you, and so condemne my selfe for a Traitour, which I neither ought nor will do.

I am sworne to obey the King, and the Lawes of the Land; you have no power to examine me by those Lawes, but by the Kings Writ, Patent, or Commission; if you can produce either thereof, I will answer the questions you shall propound; otherwise I cannot answer them, without the breach of my Oath, and the violation of the Lawes, which I will not do to save my life.

You your selves, all of you this Parliament, have sworne that the King is our onely and supreme Governour; your Protestation, your Vow and Covenant, your Solemne League and Covenant, your Declarations, all of them publish to the Kingdome, that your hopes is the maintenance of the Lawes; those Lawes are and must be derived to us, and maintained by the onely supreme Governour, the Fountaine of Justice, and the life of the Land, the King. The Parliaments are called by his Writs, the Judges sit by his Patents

tents; to all other Officers, the Citizens and Townes corporate, given by the Kings Charters; and therefore since by the Law I cannot be examined by you, without a power derived by his Majesty, I neither can, nor will answer you to examine me upon any questions. But if as yee have Gentlemen, you shall be pleased to aske me any questions, I shall really and truely answer every such question, as you shall demand.

April 10. 1647. *David Jenkins.*

This Paper hath been misrepresented to the good people of this City by a printed one, stiling it my Declaration, which I owne not; and besides is in it selfe repugnant (just like these times) the Body fals out with the Head. To vindicate my selfe from that Reputation, and to publish to the world the reality of the Paper then delivered to Mr. Corbet, and the matter therein contained, I have published this ensuing discourse.

No person who hath committed Treason, Murder, or Felony, hath any assurance at all for so much

of one houre of life, Lands or Goods, without the Kings gratious pardon, 27. Hen. 8. cap. 24.

The King is not virtually in the two Houses at Westminster, whereby they may give any assurance at all, to any person, in any thing, for any such offence.

1. The House of Commons have related to the Kingdome in their Declaration of the 28 of November last, to the Scots Papers, p. 8. That the King at this time is not in a condition to govern: No person or thing can derive a vertue to other men, or things, which it selfe hath not; and therefore it is impossible that they should have a vertue from the King to govern, which they declare he hath not himselfe to give.

2 The Law of the Land is, That no person in any Parliament hath a voyce in the House of Commons, but that he stands a person to all intents and purposes as if he had not been elected or returned; if before he sit in the House, he take not his Oath upon the holy Evangelists, that the Kings Majesty is the onely and soveraine Governour over all persons in all Causes. All the Members of the said House have

5 Elizabeth Cap. 1.

taken

taken it, and at all times as they are returned doe take it; otherwise they have no colour to intermeddle with the publick Affaires. How doth this Solemne and Legall Oath agree with their said Declaration, That the King is in no condition to governe? By the one it is sworne, he is the onely supream Governour; by the other, that he is not in a condition to governe.

3 The Oath is not that the King was, or ought to be, or had been, before he was seduced by ill Counsell our onely and supreame Governour in all Causes, over all Persons; but in the present sense, that he is our only and supream Governour, at this present, in all causes and over all persons. So they the same persons sweare one thing, and declare to the Kingdome the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation.

4 The Ministers in the Pulpits doe not say, what they sweare in the House of Commons. Who ever heard such evidence this unnaturall Warre, any of their Presbyters attribute that to his Majesty which they sweare? The reason is, their Oath is taken at Westminster amongst themselves: that which their

their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their onely and supreame Governour in all Causes, is contrary to that the Houses doe now practise, and to all they act and maintaine. They, **the two Houses** to-booth, are the only and supreame Governours in default of the King, for that he hath left his great Councell, and will not come to them, and yet the King desires to come, but they will not suffer him, but keep him prisoner at **Holmby**: so well doe their actions and Oathes agree.

5 They swear now, King **Charles** is their only and supream Governour; but with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supreame Governour, or only and supreame, but not any Governour at all: For there is no point of Government, but for some yeares past they have taken to themselves, and used his name only, to abuse and deceive the people.

6 That this virtuall power is a meere fiction, their Propositions sent to **Oxford**, to **Newport** in **Wight**, to be signed by the King, do prove it so. What needs this adoe, if they have the virtuall power with them at **Westminster**?

7 To

7. To affirme that the Kings power (which is the vertue they talke of) is separable from his person is High Treason by the Law of the Land; which is so declared by that learned man of the Law, Sir Edward Cooke so much magnified by this present Parliament, who in the 7 part of his Reports in Calvins case, fol. 11 saith thus. In the reigne of Edward the second, the Spencers, the Father and Sonne, to cover the Treason hatched in their hearts, invented this damnable and damned opinion, that homage and Oath of Legeance was more by reason of the Kings Crowne, (that is of his politick capacity) then by reason of the person of the King upon which opinion they inferred three execrable and detestable consequences. 1. If the King do not demeane himselfe by reason in the right of his Crowne his Lieges are bound by Oath to remove the King. 2 seeing that the King could not be reformed by sute of Law, that ought to be done per aspertes that is by force 3. That his Lieges be bound to governe in ayde of him, and in default of him; all which were condemned by two Parliaments, one

in

[illegible] of Edw. 2. called *exilium Hugonis le Spencer*; and the other in anno 1. Edw. 3 cap. 2.

And that the naturall body and politick makes one indivisible body, & that these two bodies incorporate in one person make one body and not divers, is resolved as the Law of Eng. 4. El. 5. Plowdon Com. fol. 213 by Sir Corbet Catlin L. Chiefe Justice of Eng. Sir James Dier, L. Chief Justice of the Common pleas, the L. Sanders, L. Chief Baron of the Exchequer, & by the rest of the Judges, *viz.* Justice Bastall, Justice Brewne, Justice Corbet, Justice Weston, Baron Frevyll, Carus and Powerel, Sergeant to the Queene, Gerrard Auturny Generall; Carell Atturney of the Dutchy; Plowdon the learnedest man of that age, in the knowledge of the Law and Customes of the Realme.

8. The Law in all ages without any controversie is and hath beeu: that no Act of Parliament bindes the Subjects of this Land without the assent of the King, either for Person, Lands, Goods, or Fame. No man can shew any sillable, letter, or line to the contrary in the bookes of the Law, or printed Acts of Parliament, in any age in this Land: If the

9 Hen. 3 Magna Charta. So in every Age till this day, and in every Kings time, as appeares by the Acts in Print,

4 part of the Inſtit Self. 234. in fine where many of the Law-Bookes are cited.

the virtuall power be in the Houſe, there needs no aſſent of the King. The ſtiles of the Acts printed from 9 Hen. 3. to 1 Hen. 7. were either, The King ordaines at his Parliament, &c. or, the King ordaineth by the advice of his Prelates and Barons, and at the humble petition of the Commons, &c. In Hen. 7. his time the Stile altered, and hath ſithence continued thus; It is ordained by the Kings Majeſty, and the Lords ſpirituall and temporall, and Commons in this preſent Parliament aſſembled: So that always the Aſſent of the King giveth the life to all, as the ſoule to the body; and therefore our Law bookes call the King, the Fountaine of Juſtice, and the life of the Law.

7 Mer. 7. 14. 12. of Hen. 7. 20.

2 Hen. 4 Cap 23
4 part inſtit. 42.
Mr. Prin in his Treatiſe of the great Seal. fol 17.
27. Hen. 8 Chap. 24.

9. Mercy as well as Juſtice belongs by the Law of the Land onely to the King. This is confeſſed by Mr. Prin, and it is ſo without any queſtion: The King can onely pardon, and never more cauſe to have ſufficient pardons then in ſuch troublesome times as theſe, and God ſend us pardons and peace: None can give any pardon, but the King by the Law of the Land: The whole and ſole power of pardoning Treaſons and

and Felonies belongs to the King are the words of the Law, and it is a deluſion to take it from any other and utterly invalid. 27. Hen. 8. c. 24.

10. Queene Elizabeth ſummoned her firſt Parliament, to bee held the 23. of Ian. in the firſt year of her Majeſties Raigne: The Lords and Commons aſſembled by force of the ſame Writ, the 21 day the Queen fell ſick and could not appeare in her perſon in Parliament that day, and therefore prorogued it untill the 25 of the ſame Month of Ianuary; Reſolved by all the Judges of England, that the Parliament began not the day of the return of the Writ, viz. the 23. of Ianuary, when the Lords and Commons appeared, but the 25. of the ſaid Moneth when the Queene came in perſon; which ſheweth evidently that this virtuall preſence is a meere deluding fiction that hath no grouud in Law, reaſon, or ſence. They have the King now a priſoner at Holmby, with guards upon him, and yet they govern by the virtuall power of their priſoner. Theſe are ſome few of the cauſes and reaſons which moved me to deliver that paper to Mr Cotbet, which I am ready to juſtifie with my life, and ſhould

3 of Eliz. Dier. 203.

should hold it a great honour to die for the honourable, and holy Laws of the Land; that which will save the Land from destruction, is *an Act of Oblivion, and his Majesties gracious generall pardon, the Souldiers their Arrears, and every man his own, and truth and Peace established in the Land, and a favourable regard had to the satisfaction of tender Consciences.*

April 29. 1647.

David Jenkins.

THE ARMIES INDEMNITY,

WITH ADDITION;

Together with

A DECLARATION

SHEWING,
How every Subject of ENGLAND ought to be tried for Treasons, Felonies, and all other Capitall Crimes, as is set down in the Lawes of the LAND.

By DAVID IENKINS; now Prisoner in the Tower of *London*.

Printed in the Yeare, 1648.

Printed in the Year, 1648.

The Armies Indemnity, &c.

UPon the publishings of the Ordinance of the 22 of *May* last, for the Indemnity of the Army, certaine Gentlemen well affected to the peace of the Kingdome, and safety of the Army, desired me to set down in writing, whether by the Law of the Land, the said Ordinance did secure them from danger, as to the matters therein mentioned: For whose satisfaction in a businesse wherein the lives and fortunes of so many men were concerned, and the peace of the Kingdom involved, I conceived I was bound in duty and conscience, faithfully and truly to set down what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following discourse.

The danger of the Army by the Law of the Land is apparent to all men: It is high Treason by the Law of the Land to levie warre against the King, to compasse or imagine his death, or the death of his Queene, or

25 Ed. 3. c. 2.
2 R. 2. c. 3.
1 H. 4. c. 10.
1 & 2. Ph. & Mary. c. 10.

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25 Ed. 3. c. 2.
2 R. 2. c. 3.
1 H. 4. c. 10.
1 & 2. Ph. & Mary. c. 10.

of his eldest Sonne, to counterfeit his money, or his great Seale; These are the very words of the Law: Other Treasons then are specified in this Act, are declared to be no Treason untill the King and his Parliament shall declare otherwise, they are the very words of the Law. King and Commons, King and Lords, Commons and Lords, cannot declare any other thing to be Treason, then that is declared; as appeares by the Lord Cook, in the places cited in the Margin. A Law-book published by order of the House of Commons this Parliament, as appeares in the last leafe of the 3 part of the Institutes, published likewise by their Order.

3 Pars inst. p. 22. & 2 pars instit. pag 47. 48. & 4 pars instit p. 23. 48. 29. 3 pars instit. cap. Treason, pag. 9. 10. & 12.

The Resolutions of all the Iudges of England upon the said Statute of the 25. *Edward* 3. (as appears in the said third part of the Institutes, *Chap.* High-Treason) have been, that to imprison the King untill he agree to certaine demands, is High-Treason; to seize his Ports, Forts, Magazine for Warre, are High Treason; to alter the Lawes is High Treason.

Mr. Iohn Sollicitor in his Speech upon the Arraignment of the Earle of Strafford, Printed by order of the House of Commons P. 7. 13.

The word King in the Statute of 25. *Edw.* 3. *c. p.* 2. must be understood of the Kings naturall person; for this

person

person can only die, have a Wife, have a Son, or be Imprisoned.

The Priviledge of Parliament protects no man for treason or felony, howbeit he be a Member; much lesse can they protect others: Those who cannot protect themselves, have no colour to make Ordinances to protect others who are no Members. 4 Pars instit. c Parl. p. 25.

The Statute of 11. *Hen.* 7. c. 1. doth by expresse words free all persons who adhere to the King. 11 H. 7. c. 1.

The Army by an Act of Indemnity free themselves from all those dangers, which an Ordinance can no more then repeale all the Lawes of the Land; the whole and sole power by Law to pardon all Treason, Felonies, &c. being solely and wholly in the King, as is cleared by the Statute of 27 *H.* c. 24. and the Law of the Land in all times. Stamford l. 2 fol. 99. 18 El. 3 Statutes at lag. 141. 20 Ed. 3. c. 1. 11 Ric. 2 c. 10. 4 Pars inst. pag. 23. 48. 29.

Having shewed the danger of the Army by the Law of the Land; next consider the Ordinance of the Lords and Commons published the 22 of *May* last for their Indemnity; by the ensuing discourse it doth appeare they have no Indemnity at all thereby.

The Indemnity proposed by the Ordinance, is for an Act done by the

authority of the Parl. or the service or benefit thereof; and that the Iudges and all other Ministers of Iustice shall allow thereof.

3 Pars inst. p 23.
2 pars inst. 47.48.
1 pars inst. 193.
Princes case 8, reports.

This Ordinance cannot secure the Army for these reasons.

1. Their Iudges are sworn to doe iustice according to the Law of the Land, and therefore the Iudges must be forsworn men if they obey it; because an Ordinance of both Houses is no Law of the Land, and no man can believe they will perjure themselves so palpably and visibly in the eye of the World.

Magna Charta cap. 29
2, Ed 3.c. 4.
28.E.3.c.3.
37 Ed.3.c.
42 Ed.3.c.3.

2. All tryals for Treasons, Felonies, Robberies, and such like capitall offences, are by the Law of the Land to be by indictment of a Iury appointed out of the Neighbourhood where the offence was done; there is no common Iury-man but understands what the Law is in these cases as well as the best Lawyers, and the Law makes the Iury Iudges of the fact, whereby the souldiers is left to their mercy whom he hath offended (as some of them have lately had woefull experience, and therefore doe rightly apprehend their danger) Now no man can think that the Iurors will perjure themselves to acquit the souldiers for robbing and plundring

Declaration of the Army presented at Walden, and printed by the appointment of the Officers subscribed.

of

of the Countreys, and thereby utterly destroy their own Rights and Properties.

3. If the Judges conceive (as they may) that the taking of other mens horses or goods, is not by the Authority of Parliament, or for the service and benefit thereof, the Souldier dies for it; they may say to steale or rob any man of his goods is not for the Parliaments service, but against it, which was always the fears of the people, and doubtless the Jurors will not think otherwise.

4. This Ordinance is restrained to the authority, service or benefit of the Parliament. The Lords and Commons make no more a Parliament by the Law of the Land then a body without a head makes a man; for a Parliament is a body compoſed of a King their head, the Lords and Commons the Members. All three together make one body, and that is the Parl. and no other, and the Judges may, ought, and I believe will according to their oathes proceed as not bound at all by this Ordinance. For it is restrained to the authority of Parliam. service or benefit thereof, whereas the two Houses are not the Parl. but onely parts thereof, and by the abuse and misunderstan-

4 Part inst. p. 1.
3 Pars inst. p. 22.
1 Pars inst. p. 1.
28 H.8. f. 11.
Dier 38 H.8. fol. 60.
12 H.7. 20.
1 pars inst. 159.
Princes case 8 Reports.

ding of this word *Parliament*, they have miserably deceived the people.

5. This Ordinance is against their Ordinance which expresly prohibits plundering, and so there is one Ordinance against another; whereby the Judges have an out-let to proceed on the one or the other, and thereby the Army hath no manner of security.

28 Aug. 1642. Col. of Ord. first part, 505. 592. 605. severall Ordinances.

6. The word Parliament is a French word (howbeit such Assemblies were before the Norman Conquest here) and signifies in that Language to consult and treat; that is the sence of the word *Parler* in the French Tongue. The Writ whereby the two Houses are assembled, which is called the Writ of Summons of Parliament, at all times, and at this Parliament used, and which is the warrant, ground and foundation of their meeting, is for the Lords of the House of Peeres, the Judges and Kings Counsell to consult and treate with the King (that is the *Parler*) of great concernment, touching, 1. the King, secondly, the defence of his Kingdome, thirdly, the defence of the Church of England. It cannot be a Parliament that will not parle with their King, but keepe him in prison, and not suffer him to come to them and parle, and therefore the

1 Pars. inst. 109.
2 Pars inst. 210.
4 Pars. P. 58.

Law

Law, and sense, and reason, informing every man that is no manner of Parliament (the King with whom they should parle being so restrained that they will not parle with him) the Army hath no manner of security by the Ordinance; for their indemnification refers to that which is not in being until the King be at liberty.

7. It is is more then probable that their Iudges before the last Circuite had instructions to the effect of this Ordinance; but they the Iudges making conscience of their Oath, layd aside the said instructions, and ought, and may, and it is believed will no more regard this Ordinance, then the said instructions: What was done in the last circuit the Army well knows, touching many of their fellow Souldiers.

8. The Houses in their first proposition to his Majesty for a safe and well-grounded peace, sent to Newcastle to desire a pardon from his Majesty for themselves: they who desire a pardon, cannot grant a pardon (comon reason dictates this to every man) and therefore that the army should accept an indemnity frō them, who seek it for themselves, or should conceive it of any manner of force, is a fancy; so that no man

The Common Souldiers second Apology.

6 Grievances of the Army published 15 *May* last, three grievances of Col. *Riches* Regiment.

men in the whole army, but may apprehend, that it is vain and a meere delusion.

9. His Majesty by his gracious message of the 12 of *May* last, hath offered an Act of Oblivion, and a generall pardon to all his people; this done the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath been done; for is is an Act of Parl. when the King & two Houses concur, and bindes all men. There is no safety by the Ordinance; there is safety by an Act of Parliament: and will not reasonable men prefetre that which is safe before that which is unsafe.

10 His Majesty by his said Letter agrees to pay the arrears of the army; I am sure that it is a publick debt, and the cheifest and the first that by the two Houses should be paid, and before any dividend of gratuities distributed among themselves: for their blood, limbs, and lives have put and kept the both Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your arrears, the Army have not an Ordinance, or the Publick Faith, but the Law of the Land to make sure unto them their indemnity for all Acts, and for their arrears, and therewith also bring peace to the Land.

11 The

11 The Kingdom and people generally desire those things. To such an army just and reasonable things must not be denyed; the things formerly proposed are most just and reasonable, you may have them if you will, if you will not, you render this Kingdom miserable, wherein you will have your share of miseries; the head and the body are such an incorporation as cannot be dissolved without the destruction of both.

The additionall Ordinance of both Houses passed the 5. of *June* instant for the fuller indemnity of the Army, makes nothing at all to the matter. 1. For that it extends not to Felony, Homicide, Burglary, Robbery, or any other capitall crime, which is the main businesse insisted upon, and most concerneth the Souldiers security.

12 The both Houses in the said additionall Ordinance say, that it is expedient that all offences be pardoned and put in oblivion; pardon and oblivion cannot be understood to be for a time, but for ever; and they themselves confesse that an Ordinance is not binding but *pro tempore*, which with the most advantagious interpretation can be but a reprive or delay of the execution of the Law, and therefore that cannot pardon or put in oblivion by their own shewing.

Mr. Pyms Speech against the Earl of Strafford, p. 16.

Six considerations printed by the command of the House of Commons.

But

27 H. 8. c. 24. But the Law of the Land is, (and so it hath constantly been practised in all times) that no persons of what estate soever, have any power to pardon treason, felony, or any other offences but the King only, who hath the sole and whole power to pardon all such crimes whatsoever. And in the same manner an Ordinance is of no authority at all to take away the right of private mens actions, by any evidence it can give; in truth all the evidence that this Ordinance gives, is, that it records to posterity nothing but a lawlesse and distempered time.

For remedy thereof I say again, it is a certaine truth, this Kingdom without an act of Oblivion, and a generall pardon, and the payment of Souldiers arreares, and a meet regard had to tender consciences, will unavoydably be ruined.

June 10. 1647.

DAVID JENKINGS
Prisoner in the Tower
of *London*.

Sundry

Sundry Acts of Parliament mentioned and cited in the Armies Indemnities, set forth in words at large for the better satisfaction of such as desire rightly to be informed.

25. Ed. 3. Chap. 2.

A Declaration what offences shall be adjudged Treason.

WHereas divers opinions have been before this time, in what case Treason shall be said, and in what not: The King at the request of the Lords and of the Commons hath made a Declaration in the manner as hereafter followeth:

That

That is to say, When a man doth compasse, or imagine the death of our Lord the King, or of our Lady his Queen, or of the eldest Son and Heire: or doth violate the Kings Companion, or the Kings eldest Daughter unmarried, or the Wife of the Kings eldest Son and Heire; or if a man do levy Warre against the Lord our King in his Realm, or be adherent to the Kings enemies in his Realm, giving to them aid and comfort in the Realm, or elsewhere, and thereof be probably attainted of open deed by people of their condition: And if a man counterfeit the Kings great or privy Seal, or his Money: and any man bring false Money into this Realm, counterfeit to the money of England, as the money called Lushburgh, or other like to the said money of England, &c.

11 H. 7. Chap. 1.

None that shall attend upon the King, and do him true service, shall be attainted or forfeit any thing.

THE King our Soveraign Lord calling to remembrance the duty of Allegiance of his subiects of this his Realm, and that they by reason of the same are bound to serve their Prince and Soveraigne Lord for the time being in his Wars, for the defence of him and the land, against every rebellion, power, & might raised, reared against him: and wish him to enter and abide in service in battell, if case so require, and that for the same service what fortune ever fall by chance in the same battel against the mind and will of the Prince (as in this land sometime passed hath been seen) that it is not reasonable, but against all laws, reason & good conscience, that ye said subiects going with their Soveraign Lord in Wars, attending upon him in his person, or being

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in other places by his commandment within this Land or without, any thing should lose or forfeit, for doing their duty or service of Allegiance. It be therefore ordainned, enacted, and established by the King our Soveraign, by the advice and assent of his Lords Spirituall and Temporall and the Commons in this present Parliament assembled, and by authority of the same, that from henceforth no manner of person or persons whatsoever he or they be that attend upon the King and Soveraingn Lord of this land for the time being, in his person, and do him true and faithfull service of Allegiance in the same, or be in other places by his commandements in his wars within this land, or without, that for the said died and true duty of Allegiance, he or they bee in no wise convict or attaint of high treaon nor of other offences for that cause, by Act of Parliament, or otherwise by any processe of Law, whereby he or any of them shal lose or forfeit

Indempnity of Soldiers

said life, Lands, tenements, rents, possessions, hereditaments, goods, chattels, or any other things, but to be for that deed and service utterly discharged of any vexation, trouble, or molestation. And if any Act or Acts, or other process of the Law hereafter thereupon for the same, happen to be made contrary to this Ordinance, that then that Act or Acts, or other process of Law, whatsoever they shall be, shall be utterly void. Provided always, that no person or persons shall take any benefit or advantage by this Act, which shall hereafter accrue from his or their said Allegiance.

Cap. 24. In the Statute of 27. H. 8. It is enacted that no person or persons of what estate or degree soever they be of, shall have any power or authority to pardon or remit any Treason, Murders, Man-slaughters, or any other Felonies, &c. but that the King shall have

the

the sole and whole power and authority thereof united and knit to the Imperiall Crown, as of right it appertained, &c. And in the same Statute it is enacted further, That none shall have power of what estate, degree, or condition soever they be, to make Justices of Eyre, Justices of Assize, Justices of Peace, &c. but all such Officers and Ministers shall be made by Letters Patents under the Kings great Seale in the name and by the authority of the King and his Heirs & Successors Kings of this Realm.

In the first year of Queen Mary and the fifth Chapter, It is enacted by the Queen, with the consent of the Lords and Commons, That no deed or offence by act of Parliament made treason, shall be taken, deemed, or adjudged to be high Treason, but only such as be declared and expressed to be Treason by the Act of Parliament made 25. Ed. 3. before mentioned.

A Declaration of Mr. *David Jenkins*, now Prisoner in the Tower of *London*, one of His Majesties Judges in *Wales*, for tryals of Treasons, Murthers, Felonies, and all other capitall crimes, that they ought only to be by Juries, and not otherwise, unlesse it be by Act of Parliament.

THe Common Law of this Land is, that every Freeman is subject to a tryall by Bill of Attainder in Parliament wherein His Majesty and both Houses must necessarily concur, for that tryall and attainder is an *Act of Parliament* to which all men are subject to.

a No man shall otherwise be destroyed, &c. But by the lawfull judgement of his Peers, or by the common Law of the Land. Peeres to Noblemen are Noblemen; Peeres to the Commons are Knights, Gen. &c. Judgement

a Mag. Charta, 29. 2 part. inst. fol. 28, 29. 46, 48, 49, 50. composed by Sir *Ed. Cook* and published by the Order of the House of Commons in *May* 1641. a parts instit. fol. 41, 556.

ment of Peers referres to Peers those words; *The Law of the Land*, &c. refers to Commons; the Law of the Land is for the tryall of the life of a free Commoner, by indictment, presentment of good and lawfull men where the deed is done, or by Writ original all of the common Law, all this is declared in *Magna Charta*, c. 29, and by 25. *Ed.* 3. c. 4. 28. *Ed.* 3. c. 3. 37. *Ed.* 3. c. 8. 42. *Ed.* 3. c. 3. If the Lords will try any man by an Ordinance, they destroy that excellent Act of *Magna Charta*, and all those other good Laws.

Sir *Simon de Retford* a free Commoner of *England* was condemned by the Lords to death by an Ordinance, which after the Lords better considering the matter, that they might be acquitted of that sentence, became suiters to the King, that what they had done, in future time might not be drawn into president, because that which they had done was against the Law; *b* with this agrees the practise, and usage of all times in this Land; all the free Commoners of this Kingdome have always been tryed and acquitted or condemned in capitall causes by Iurers of their equals.

b Rot. Par. 1 roulet E. 2. Num. 2. part inst. p. 50. with this agrees Sir *John Leis* case, Rot. Par. 42. E. 3. Num. 22. 23. 2. Inst. f. 50.

An Ordinance bindeth not in Law

at

at all, c and but *pro tempore*, as the two Houses now affirm, a man's life cannot be tryed by that which is not binding, and to continue for all times; for life lost cannot bee restored.

c See 4 p. inst. f. 23, 48 232, 298, 292. 2. p. inst. f. 47, 48, 157. 643. 4 H. 7. f. 18. 1 H. 7. f. 14. 3 p. inst. f. 41.

By an Act of Parliament of the 1. & 2. *Philip* and *Mary*, c. 10. It is enacted that all trials for Treason hereafter to be had, shall be according to the course of the Common Law, and not otherwise.

If the crime charged upon any be Treason against the two Houses (against the Parliament it cannot bee, for there is no Parliament without the King) *That is no Treason in Law*, as appeares by 25. *Ed.* 3. c. 2. 11. *R.* 2. c. 3. 1. *H.* 4. c. 10. 1. & 2. *Philip* and *Mary*, c. 10. 13. *part of the Institutes*, page 23.

An Act of Parliament to make any a Iudge where he is party, is a void act; d for none can be a Iudge and party in the same cause; and therefore the House of Peers being a party touching the crime charged upon any man, whom they would try by an Ordinance for Treason against both Houses, cannot be a Iudge.

d Dr Bonams case, 8. part of Cooks Reports.

By the Petition of Right, e if any man deserve death he ought to suffer

e Petition of Right, 3. C. R.

the

the same according to the Laws of the Land established, and not otherwise; but an Ordinance of the Lords is no established Law.

The protestation, the Vow and Covenant, the solemn League and Covenant, the Declarations of both houses, had, made and published sithence this unnaturall Warre, are amongst other things sworn and set down to be for maintenance of the Lawes; the people of this Land ought to enjoy the benefit of their Birth-right, the Law of the Land, and the making good the said Protestation, Vow and Covenant, League and Covenant, and Declarations; otherwise truth must be false, and will be said, that there is brought in a new arbitrary and tyrannicall government.

3 pars inst. fol. 89.

If the Lords have taken one man's life by an Ordinance, they are not bound to take any more, and the case differs in case any appeale be made from a tryall by Ordinance to a tryall at common Law, which was not done by that man whose life was taken away by an Ordinance.

The Lords ought to remember that His Majesty and His progenitors have made them a house of Peers; they are trusted to counsell him in peace,

f as

and defend him in warre, his Majesty in Parliament is to consult and treat with the Peers, and with his Councell at Law, Judges, his Sergeants, Atturney, and Solicitor, and Masters of the Chancery, the Lords and that Councell by the respective Writ of Summons to Parliament are to give Counsell, [g] the House of Commons by their Writ to performe and consent.

In the House of Lords, the Court of Parliament onely is, for they onely examine upon Oath [h] with them, the King in Person sits, and by them their erroneous judgements [*] (upon a Petition to his Majesty for obtaineing of a Writ of Errour) by the advice of the Judges are reversed, or affirmeed, &c. The Lords are to remember that their eminency and grandeur is preserved by the Lawes, if they leave all to will, and dishonour their King, and make nothing of the Lawes, they will make nothing of themselves in the end.

[f] Nevels case, 8 part Cooks reports.

[g] 4 *pars inst. fol.* 4. 9. 27 Edw. 3 c. 1. 15. 3 *pars instit. fol* 125

[h] 1 Hen. 7 *fol.* 20

[*] 14 E. 3. c. 5

[i] And therefore, it is well worth your observation what was said by Mr. *John Pym* a Member of the House of Commons in his Speech against the Earle of *Strafford*, in the beginning of the Parliament, which speech is published by the expresse order of the

House of Commons, the words are these: *The Law is that which puts a difference betwixt good and evill, betwixt just and unjust; if you take away the Law, all things will fall into a confusion, every man will become a Law unto himselfe, which in the depraved condition of humane nature must needs produce many great enormities: Lust will become a Law, and Envie will become a Law; Covetousnesse and Ambition will become Lawes, and what dictates, what decisions such Lawes will produce, may easily be discerned,* &c. They that love this Common-wealth, as things now stand, will use all means to procure an Act of Oblivion, a generall pardon from His Majesty, the Souldiers their Arreares, and tender consciences a just and reasonable satisfaction, else we must all perish, first or last.

See 1 par. book decl. pag. 140, 163.

May. 17. 1647.

God preserve His Majesty, and the Lawes, wherein their Lordships and the whole Kingdom are concerned.

David Jenkins prisoner in the Tower of *London.*

THE

THE CORDIALL OF Iudge Ienkins

For the good People of *LONDON.*

In reply to a thing, called

An Anſwer to the poyſonous ſeditious Paper of Mr. DAVID JENKINS; by *H. P.* Barriſter of Lincolns-Inne.

Printed in the Yeare, 1648.

The Cordiall of Judge JENKINS, for the good people of LONDON.

AFter the said Mr. *H. F.* hath made a recitall of the heads of my *Vindication*, he deduced his Answer unto these eight particulars, which follow verbatim.

1.

It cannot be denied, but the *Parliament* sits by the *Kings* Writ, nay if Statute Law be greater than the *Kings* Writ, it cannot be denied but the *Parlia.* sits, or ought to sit by something greater than the Kings writ: & if it be confessed that the Parl. sits by the Kings writ, but do not act by the Kings writ, then it must follow that the Parlia. is a voyd vaine Court, and sits to no purpose; nay it must also follow, that the Parl. is of lesse authority, and of lesse use than any other inferiour Court, for as much as it is not in the Kings power to

controule other Courts, or prevent them from sitting or acting.

2.

This is a gross *non sequitur*, the *Kings* power is in himself; *Ergo*, it is not derived to, nor does reside vertually in the *Parliament*. For the light of the Sun remains imbodied, & unexhausted in the Glob of the Sun, at the same time as it is diffused and displayed through all the body of the aire; and who sees not that the King, without emptying himself, gives Commissions daily of *Oyer* and *Terminer*, to others, which yet himself can neither frustrate nor elude? but for my part I conceive it is a great error to infer that the *Parliament* hath onely the *Kings* power, because it hath the *Kings* power in it: for it seems to me, that the Parliament does both fit and act by concurrent power, devolved both from the King and Kingdome; and in this some things are more obvious and apparent than in others. For by what power does the Parliament grant Subsidies to the King? if onely by the power which the King gives, then the K. may take Subsidies without any grant from the Parliament: and if it be so by a power, which the people give to the Parliament, then it will follow.

low, the Parliament hath a power given both by King and Kingdom.

3.

The sending Propositions to the King and defring his concurrence, is scarce worth an Answer: for Subjects may humbly petition for that which is their strict right and property. Nay it may sometimes beseem a Superiour to prefer suit to an inferiour for matters in themselves due. God himself hath not utterly disclaimed to beseech his own miserable, impious, unworthy creatures: besides, 'tis not on. Tenet, that the King hath no power, because he hath not all power; nor that the King cannot at all promote our happinesse, because he hath no just claime to procure our ruine.

4.

We affirm not that the Kings power is separated from his person, so as the two *Spencers* affirmed, neither do we from conclusions out of that separation as the two *Spencers* did; either that the King may be removed for misdemeanours, or performed *per aspectu*: or that the Subject is bound to govern in ayd of him: we only say, that his power is distinguishable from his

person, and when he himself makes a distinction betwixt them, commanding *one thing* by his legall Writs, Courts and Officers, and commanding *another thing* extrajudicially by word of mouth, Letters, or Ministers, we are to obey his Power rather than his Person.

5.

We take not from the King all power of pardoning Delinquents, we only say it is not proper to him quatenus *made*: For if the King pardon him which hath murthered my Son, his pardon shall not cut me off from my appeall: and 'tis more unreasonable, that the Kings pardon should make a whole State which hath suffered remediless, than any private man. So if the King should deny indemnity to those which in the furie of warre have done things unjustifiable by the Lawes of peace, and thereby keep the wounds of the State from being bound up, 'tis equitable that an Act of Indemnity should be made forcible another way. And if this will not hold, yet this is no good consequence, the *King* is absolute in point of pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delinquencies,

ſinquencies, thereof it hath no power in other matters.

6.

The Parliament hath declared the *King* to be in no condition to govern: but this muſt not be interpreted rigidly, and without diſtinction; for if the *King* with his Sword drawn in his hand, and purſuing the Parliament and their Adherents, as Rebels, bee not fit for all Acts of Government, yet it is not hereby inſinuated that he is diveſted of the habit or right of Governing: if he be unqualified now, he is not unqualified for the future; if he may not doe things deſtructive to the Parliament, he is not barred from remaining to the Parliament, or doing juſtice to the Parliament. This is a frivolous cavil, and *ſubterfuge*.

7.

We ſwear, that the *King* is our ſupreme Governour over all perſons, and in all cauſes; but we do not ſwear he is above all Law, nor above the ſafetie of his people, which is the end of the Law, and indeed *Paramount* to the Law it ſelfe. If he be above Law, or liable to no reſtraint of our Law, then wee are no freer than the

French or the *Turker*, and if he be above the prime end of Law, *commun-wealth*, then we are not free as the *French* or *Turkes*. For if the totall subversion of the *French* or *Turke* were attempted, they might by Gods Law, imprinted in the book of Nature, justifie a selfe defence; but we must remedilesly perish, when the King pleases to command our throats. Besides, how atchieved the King of *England* such a Supremacy above all Law, and the community it selfe, for whole behoofe Law was made? If Gods donation be pleaded, which is not speciall to him, or different from what other Kings may pretend to, then to what purpose serves our Lawes, nay, to what purpose serves the Lawes of other Countries? for by this generall donation, all Nations are condemned to all servitude as well as we. If the Law of this Land be appealed to, what Bookes hath Mr. *Jenkins* read, where hath he found out that *Lex Regia*, whereby the people of *England* have given away from themselves all right in themselves? Some of our Bookes tell us, that we are more free than the *French*; that the King cannot oppresse us in our Persons or Estates, by imprisonment, denying justice

justice, of laying Taxes without our consents. Other Bookes tell us, that the safety of the people is the supream Law, and that the King hath both God and the Law for his Superiour. But all this is nothing to learned Mr. *Jenkins*,

8.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings assent: yet this is still to be denyed, that therefore without this assent particularly expreſt, the two Houses can doe nothing, nor have any virtuall power at all, no, not to examine Mr. *Jenkins*, nor to doe any other thing of like nature, though in order to publicke justice and safety, I have done, and with M. *Jenkins* would call in and lick up againe his black infamous execrable reproaches, so filthily vomited out against the Parliament.

To the first.

I Was examined by a Committee appointed by the House of Commons: I say, and said that the House of Commons have no power to examine me, for that it is no Court; every Court hath power to exa-

examine upon Oath; this power the House of Commons never claimed. The Court of *Pye powders*, *court-Baron*, *Hundred court*, *County court* and every other Court of Record, or not of Record hath power to examine upon Oath, and an examination without Oath is a communication onely: examination in Law is upon Oath.

5 H. 4 c. 3
3 H. 6. 46
19 H. 6. 43
35 H. 6. 5

There is no court without a power of tryall: the House of Commons have no power to try any offence, nor ever practised it by Bill, Indictment, Information, Plaint, or Originall Writ, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon oath, without which there can be no condemnation or judgement: and that which can attaine to no reasonable end, the Law rejects as a thing *inutile* and useleſſe, *Sapiens incipit finis*.

Sir Anthony Maynes case.
Coak 1 part Reports.
Lit. 2. lib. Sect. 194. 6 H. 4. 1

The writ whereby they are called gives them power, *Ad faciendum & conſentiendum*: To what? To ſuch things *Que ibidem de communi conſilio ordinari contingerint* (viz.) in the Parliament. This makes nothing at all for a Court for the House of Commons; that *conſilium* which that Writ intends, is cleared partly by the Writ

2 part inſtit fol. 4. & 9.

for

for chusing Knights, &c. For the King by that Writ is said to resolve to consult and treat with the Prelates and Peers of the Kingdome, for and touching the great concernments of the Common-wealth (for the King never sits in the House of Commons:) and this also is made evident by the Writs to the Prelates, Peers, Judges, and to his Counsell at Law: The words in the Writ are, *To appeare and attend the Parliament, Concilium impensurus*, the one doth *consulere*, the other *facere & consentire*.

The House of Lords, where the King sits in persons, assisted by His Lords, Judges, Serjeants, Attorney, Solicitor, Masters of the Chancery, is a court of Record to many purposes, as doth appear in the Bookes of Law, and the Statutes of the Land, and that court is onely in the House of Lords, where the King sits. 7 H. 6. 28 1 H. 7 30. 13 Ed. 3. c. 5 4 pars inst. p. 21.

A court must either be by the Kings Patent, Statute Law, or by the common Law, which is common and constant usage: the House of commons hath no Patent to bee a court, nor Statute Law to bee a court, nor common usage: they have no Journall Booke, but since *Edward*, 6. time, was there ever Fine by the House of Com- Plowd. Com. 319.

Commons entreated into the Exchequer? For murder or Felony they can imprison no man, much lesse for Treason; that House which cannot do the lesse, cannot doe the greater.

25 E. 3 c. 4. 3 Car. Petition of Right.

It is ordained, that no man shall be imprisoned, or put out of his Franchise by the King or his Councell, but upon indictment or presentment of his good and lawfull Neighbours, where the deed is done, or by originall Writ at the Common Law, and so is *Lex terræ* the Law of the Land mentioned in *Magna Charta*, cap. 29. expounded, and the said *Magna Charta*, and *Charta de Forresta*, are declared by the Statute of 25 E. 3. c. 1. to be the Common Law of the Land. All Judges and Commissioners are to proceed *Secundum legem, & consuetudinem Regni Angliæ*, as appeares by all proceedings in all Courts, and by all Commissions: and therefore the House of Commons by themselves proceeding not by Indictment, Presentment, or Originall Writ, have no power to imprison men, or put them out o Franchise.

4 Part inst. p. 1. 3 Part inst. p. 23.

This no way trenches upon the Parliament; for it is in Law no Parliament without King and both Houses; I have onely in my Paper

delivered to Mr. *Corbet*, applyed my selfe to that Committee, that had not power to examine me, but I never thought, said, or wrote, that the Parliament had no power to examine me. The Law and custome of this Land is that a Parliament hath power over my life, liberty, lands and goods, and over every other Subject, but the House of Commons of it selfe hath no such power.

12 *H.* 7. 20 Princes case
8 *Pars* Cook.
1 *Pars instit.* p. 159
14 *H.* 8. 3
Diet 38.
H. 8. 60

For the Lord *Cookes* relation, that the House of Commons have imposed Fines, and imprisoned men in Queene *Elizabeths* time, and since; Few facts of late time never questioned, make no power nor Court; *à facto ad jus* is no good argument; for the words of the Statute of 6 *Hen.* 8. *cap.* 16 that a licence to depart from the House of Commons for any Member thereof, is to be entred of Record into the Booke of the Clearke of the Parliament, appointed, or to be appointed for that House, doth not conclude that the House of Commons is a Court of Records.

1 *Pars inst.* 19. *b.*

4 *P. Inst.* c. *Parl.*

Hobbarts reportsfol. 152.

For first, that Law of 6 *H.* 8. *c.* 26. handles no such question, as that, whether the House of Commons be a Court; it is a maxime in all Lawe, *Lex aliud tractans nil probat*, the word

Hobbarts reports, fol. 154.

(*Re-*

(*Record*) there mentioned, is onely a memoriall of what was done and entred in a book: A plaint removed out of the County-Court to the Court of the common Pleas, hath these words in the Writ of remove, *Recordari facias loquelam*, &c. and yet the county court is no court of Record; and so for ancient Demeine in a Writ of false judgement, the words are *Recordari facias loquelam*, &c. and yet the court of ancient Demeine, is no court of Record; and so of a court Baron. the Law and custome of *England* must be preserved, or *England* will be destroyed, and have neither Law nor custome.

Fitz. Nat. Br. 70
Fitz. Nat. Br. 13.
12 H. 4. 33.
34 H. 6. 49.

Let any man shew me, that the Court of Lords, or the House of Commons in any age hath made any man a Delinquent (*Rege dissentiente*) the KING contradicting it under his Great Seale. *Michell*, and others of late were condemned by the prosecution of the House of Commons in King *James* his time; did King *James* ever contradict it? And so in ancient times, where the House of Peers condemned the Lord *Latimer* in 50 *E.* 3: The Kings pardon freed him; which shewes clearly, that the Kings expresse or implied assent must of ne-

4 Pars Inst. Tit. Parlia. P. 23.

cessity

tency be had to make a Delinquent. The execution of the sentence is in the Kings name.

The Gentl. saith, *That the Parliament sits, or ought to sit by something greater than the Kings Writ, &c.*

No Parliament did ever sit without the Kings Writ, nor could ever Parliament begin without the Kings presence in Person, or by a Guardian of *England* by Patent under the Kings great Seale, the King being *in remote*, or by Commission under the great Seale to certaine Lords representing the Kings person, and it hath been thus in all Ages unto this Session of Parliament, wherein his Majesty hath been pressed, and hath passed two Acts of Parliament, one for a Triennial Parliament, and another for a perpetuall, if the Houses please, to finish their desires; how these two Acts agree one with another, and with the Statute in *Edw.* the thirds time, where Parliaments are ordained to be holden every yeare, and what mischiefes to the people of this Land such length of Parliaments will produce by protections and priviledges to free them and their menniall servants from all debts during their lives, if they please to continue it so long, and how

4 p. Inst. p. 4 & 6

4 E. 3. c. 14. 36. E. 3 c. 10 21 Iac. the Act of Limitation of Actions, c. 22.

how destructive to mens actions a-
gainst them, by reason of the Statute
of Limitations, which confines their
actions to certain yeares, and many
other inconveniences of greater im-
portance, is easie to understand.

How can any man affirme, that the
two Houses of Parliament do all
now by the Kings Writ, which relates
to counsel and treatie with the King
concerning the King, the defence of
his Kingdom and of the Church of
England, these are three points which
it tends to, as appeares by the Writ.
They keep their King prisoner at
Holmby, and will not suffer him to
consult and treat with them. They
have made a Vow and Covenant to
assist the Forces raised and continued
by both Houses against the Forces ra-
sed by the King without their consent,
and to the same effect have devised
the Oath which they call the *Negative*
Oath: Is this to defend the King's
Kingdom? or their kingdom?

When by their solemne League and
Covenant they extirpate Bishops,
Deanes and Chapters root & branch.
Is this to defend the Church of *Eng-*
land? (that Church must necessarily
be meant, that was the Church of
England when the said Writ bore test)

they

4 p. inst. p. 14
Vow and Covenant, p. 11.

3 pars Cook Dean and Chapter of Norwich.

they were not summoned to defend a Church that was not in being, to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, *The King cannot controul other Courts of Justice, or prevent them from sitting, or acting, and therefore not the two Houses, &c.* It is true, the King cannot controule or prevent his other Courts, for that they are his ordinary Courts of common Justice, to administer common right unto all men, according to the fixed Lawes. The Houses make no Court without the King, they are no Bodie corporate without the King, nor Parliament without the King, they all make one corporate Bodie, one Court called the Parliament, whereof the King is the Head, and the Court is in the Lords House, where the King is present: and as a man is no man without a head, so the Houses severed from the King, as now they are, have no power at all, and they themselves by levying War against the King, and imprisoning of him, have made the Statute for not dissolving, adjourning, or prorogning this Parliament of no effect, by the said Acts of their own: they

14 H. 8. 3. 36 H. 8. Dier co. 4 p. [illegible] p. 5. [illegible]

they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat and reason with them, whereby he may discerne what Bils are fit to pass, and what not, which in all ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they sit to no purpose by their owne disobedience and fault.

17 R. 2. c. 24
28 H. 8. 22 Dier.

For the ordinary Courts at *Westminster*, the Judges in all those Courts are Judges by the Kings patent or Writ, otherwise they are no Judges: the Houses can make no Judges, they are no Judges at all who are made by them; the whole and sole power of making Judges belongs to the King: the King cannot controule or prevent his owne Judges from sitting and acting, but the Houses He may, for they are not the Kings Judges, but the Judges of the Houses. In his other Courts, the King commits his power to his Judges by his patent, and they are sworne to doe common right to all men, and the King is sworne not to let them from doing, the King cannot judge in those Courts, nor controule, but the King is both Judge and Controuler in the Court of Parliament: *Quoad Acts* for his assent or dissent doth give life

3 R. 3. 12

of

& death to all Bills. Many Lawyers have much to answer to God, this Kingdom, and to posterity, for puzzling the people of this Land with such Fancies, as the Gentleman who wrote the Answer to my Paper, and others have published in these Troubles, which have been none of the least causes of the raising and continuing of them. And so I have done with the first part of this Answer.

A D. 2.

For the *Non sequitur*, in the second section of the Gentl. Answer, the Antecedent and the Consequent are his owne.

(Libellus:
Quam recitas meus est (O Fidentine?)
Sed male dum recitas incipit esse tuus

My words are, that the King is not virtually in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the King: My paper hath no such thing, as that the Kings power cannot be derived to others, or the virtue of his power: For his power and the virtue of his power, is in all Patents to his Judges, in Charters to Corporations, in Commission

27 H. 8 c. 24

missions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him: but when they renounce that power, and claim it not from the King, and declare to the Kingdom that he is not in condition to govern, and imprison him, and usurp to themselves all Royall Authority, as the two Houses now do, no reasonable man can affirme that they Act by the power of their Prisoner, who hath no power to give them, that by force of Armes take all power unto themselves.

The Genel. saith, *The King grants Commissions dayly of* Oyre *and* Terminer, *which he cannot frustrate nor elude.* The King may revoke and discharge the Commission by his Writ, as he may remove all Judges, and place other men in their room; and any Kings death determines all the Judges Patents at *Westminster* Hall, Commission of *Oyre* and *Terminer*, &c. And so he might dissolve both Houses in all times, by his Writ under the Great Seal, until that in this Parliament, by his own concessions, the King of his goodnesse had secluded himselfe; which goodnesse hath been full ill requited.

4 E. 4. 39.
5 E. 4. 4.
1 Eliz. Dier. 165.
1 Mar. Brooks case 447.

The

The Gentl. affirmes, *That the power of Parliament hath it concurrent from the King and Kingdom*, which, he conceives is proved by the grant of Subsidies to the King by the Parliament. The mistaking of this word *Parliament*! hath been mischievous in these times to this Land, and it is effectedly mistaken, which makes the sin the greater, for the two Houses are not the Parliament, as before is declared, and at this time so to inculcate it, when all men know, that of the 120. Peers of this Kingdome, who were temporall Peers before the Troubles; there are now not above 30. in the Lords House, and in the House of Commons about 200. of the principall Gentlemen of the Kingdom left the House and adhered to his Majesty, who is imprisoned by them, shewes no such candor as is to be desired.

4 pars inst. pag.

It is true, that no Tallage can be laid upon the people of this Land but by their consent in Parliament, as appeareth by the Lawes mentioned in the Margent; but you shall finde in Mr. *Seldens* learned Book, called *Mare clausum*, a number of presidents in Henry the thirds time for Ship-mony justly condemned this Parliament, to the which his Majesty assented; and in truth

25 E. 1 *Confirmatio chartarum c. 6.*
34 E. 1. c. 1 *de Tallagio non concedendo.*

truth that Ship-money was condemned before by the said two Statutes of 25 E. 1. & 34. E. 1. *de Tallagio non concedendo. Dangelet, Englishly,* and many grievous Burthens were laid upon the people, and born, untill that memorable Princes time. But I am of opinion that the Common Law of the Land did alwaies restraine Kings from all Subsidies and Tallages, but by consent in Parliament; which doth appeare by *Magna Charta* the last chapter, where the Prelates, Lords, and Communalty gave the King the fifteenth part of their moveables. In truth it is no manner of consequence, because the King cannot take what he pleaseth of the Subjects good, that therefore they have a concurrent power in Parliament: there have been many Parliaments and no Subsidies granted, Parliaments may be without Subsidies, but Subsidies cannot be without Parliaments: of ancient times Parliaments rarely granted any, unlesse it were in the time of forreigne Warres; and in my time, Queene *Elizab.* refused a Subsidie granted in Parliament, and in the Parliament of 1 *Jac.* none were granted. The Gentl. should make a conscience of blinding the people with such untrue colours,

ters to the ruine of the King and people.

AD. 2.

The Gentl. affirmes, *That the sending propositions to the King, and desiring his concurrence, is scarce worth an answer; for Subjects may humbly petition for that which is their strict right and property, &c.* The propositions sent to *Newcastle*, are in print; wherein the two Houses are so farre from humbly petitioning, that they stile not themselves his Majesties Subjects, as appeares by the propositions.

That they have a strict right or property to any one of these propositions is a strange assertion, every one of them being against the Lawes now in force. Have the two Houses a strict right and property to lay upon the people what Taxes they shall judge meet? To pardon all Treasons, &c. that is one of their propositions. Have they a strict right and property to pardon themselves? and so for all the rest of their Propositions.

These propositions have been Voted by both Houses, the Kings assent (they being drawn into Bills) makes them Acts of Parliament: Hath the King

12 H. 7. 20. 1 Iac. c. 1. 1. Car. c. 7.

no right to assent or dis-assent? Was the sending but a Compliment? All our Law-books and Statutes speak otherwise. This Gent. and others, must give an account one time or other for such delusions put upon the people.

AD. 4.

The Gent. saith, *They affirme not, that the Kings power is separated from his person, so as the two Spencers affirmed, &c.* His Majesties person is now at *Holmby* under their guards; have they not severed his power from him, when by no power they have left him, he can have two of his Chaplains, who have not taken their Covenant, to attend him for the exercise of his conscience?

15. Ed. 2. Exilium Hugonis Calvins case 1 E. c. 2. 7. pars Reports, 11.

For the three conclusions of the *Spencers*, do not the two Houses act every of them? They say, his Majesty hath broken his Trust, touching the Government of his people: They have raised Armies to take him, they have taken him and imprisoned him; they governe themselves: they make Lawes, impose Taxes, make Iudges, Sheriffes, and take upon them *omnia insignia summæ potestatis*: Is not this to remove the King for misdemeanours,

reforme *per aspera*, to govern in aid of him; the three conclusions of the *Spencers*? Doe they think the good people of *England* are become stupid, and will not at length see these things?

The Gentleman saith, *They doe not separate his power from his Person, but distinguish it*, &c. His power is in his legall Writs, Courts, and Officers: when they counterfeit the Great Seal, and seale Writs with the same, make Iudges themselves, Courts and Officers by their own Ordinances against his consent, declared under his true Great Seale of *England* (not by word of mouth, letters, or ministers only,) their Seal is obeyed, their own Writs, their own Iudges, their own Courts, their own Officers, and not the Kings. The time will come when such strange actions & discourses will be lamented.

Plowd. 4. Eliz. 213. the Kings Power & his person are indivisible.

AD. 5.

The Gentleman goes on, *we take not from the King all power of pardoning Delinquents, wee only say it is not proper to him* quarto modo, &c. What doe you meane by *quarto modo*? I am sure, *Omnis Rex Angliæ, solus Rex & semper Rex*, can doe it, and none else; read the books of the Law to this purpose, collected by that reverend

Stanford. pleas 99. 27. H. 8. c. 24. Dier. 163.

and learned Iudge *Stanford*, from all Antiquity to his time, who died in the last year of King *Philip* and Queen *Maries* Reign, you shall find this a truth undeniable; and this power was never questioned in any Age in any Book by any untill this time, that every thing is put to the question. You Gentlemen, who profesſe the Law, and maintain the party against the King, returne at length, and bring not so much scandall upon the Law (which preserves all) by publishing such incredible things.

Bract. lib. 3 cap. 14. fol. 132. 1. pars Instit. pag. 344. Plow 3. Eliz. 236. 237.

We hold only what Law holds: the Kings Prerogative and the Subjects Liberty are determined, & bounded, and admeasured by a written Law what they are; we doe not hold the King to have any more power, neither doth his Majesty claim any other but what the Law gives him; the two Houses by the Law of this Land, have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting; and the Army under Sir *Thomas Fairfax* (howbeit but Souldiers) doe now understand that to be Law, and doe now evidently see, and assuredly know, that it is not an Ordinance of the two Houses, but an act of Parliament, made by the King, Lords, and

and Commons that will secure them; and let this Army remember their executed fellow-Souldier, and the Law was alwayes so taken by all men untill these troubles, that have begot Monsters of opinions.

AD. 6.

This Gentleman sayes, *The Parliament hath declared the King to be in no condition to govern, &c.*

There is no end of your distinctions; and you professe the Law; shew me Law for your distinctions, or letter, syllable, or line; in any Age in the books of the Law, that the King may in one time be in no condition to govern, and yet have the habit of governing, and another time he may (*viz.*) when the two Houses will suffer him; the Law saith thus, *Vbi lex non distinguit, non est distinguendum.*

He sayes, *The King is not barred from returning to His Parliament*, (as hee calls the two Houses) hee knows the contrary, the whole City knows the contrary, *Nos juris consulti sumus sacerdotes*, (as *Justinian* the Emperour hath it, in the first book of his *Institutions*) and therefore knowledge and truth should come from our lips; Worthy and ingenuous men

will remember, and reflect upon that passage of that good and wise man Seneca, *Non qua itur, sed qua eundum*, follow not the wayes of the Lawyers of the House of Commons: God forgive them, I am sure the King will, if they be wise and seek it in time.

A D. 7.

5. Eliz. ch. 1. Cawdrey's case 5. pars, fol. 1.

The Gent. sayes, *we swear that the King is our supreme Governour over all persons and in all causes, &c.* Why hath he left out the word (*onely*) for the Oath the Members now take, is that King *Charles* is now the only and Supream Governour in all causes, over all persons, and yet they keep that only Supream Governour now in prison, and act now in Parliament by vertue of their Prisons Writ, and by a concurrent power in this Parliament, and by their own strict right and property (as the Gentleman affirms in his Answer.) These things agree well with their Oath, that the King is the onely Supreame Governour in all causes over all persons. This Oath is taken now in the Parliament time by all the Members of the House of Commons, and is required by the Law to be taken in all Parliaments, otherwise they have no power, nor

This Oath is allowed by the common-Law of the Land.

co-

colour to meddle with the publick Affaires.

This Oath being taken in Parliament, that the *King is the only and Supream Governour in all causes*, then it followes in Parliament causes, *over all persons*, then over the two Houses. Let them keep this Oath, and we shall have a life of peace in the Land, and good Lawyers ought to desire peace both for the publick good, and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent. sayes, *we do not sweare that the King is above all Law nor above the safety of his people*; neither do we sweare, but his Majesty and we will sweare to the contrary, and have sworne and have made good, and will by Gods grace make good our Oath to the world, that the KING is not above the Law, nor above the safety of his people: the Law and the safety of his people are his safety, his Honour and his Strength.

ADD.

The Gent. concludes, *The Acts of Parliament are not formally binding nor compleat without the Kings assent, yet the Houses have a virtuall power with-*

out the Kings particular assent, to do things in order to publique justice, and safety (*viz.*) In setting up the Excise, in raising and maintaining of Armes, in Taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, imprisoning the King, abolishing the Common prayer Book, selling the Church Lands, &c. all these are in order to the publick justice and Safety.

M. H. P. you are of my profession; I beseech you, for the good of your Country, for the honour of our Science, perswade your self and others, as much as in you lies, to believe and follow the monition and councell of that memorable, reverend, and profoundly Learned in the Lawes and Customes of the Land, the Lord COOKE, who writes as becomes a great and a learned Judge of the Law (a person much magnified by the two Houses) in these words:

3 pars inst. pag. 36.

Peruse over all Books, Records, and Histories, and you shall finde a Principle in Law, a Rule in Reason, and a Triall in Experience, that Treason doth ever produce fatall and fi-

nall

mall destruction to the offender; and never attaines to the desired end (those incidents inseparably thereunto) & therefore let all men abandon it as the pernicious bait of the devill and follow the precept in Holy Scripture. SERVE GOD, HONOVR THE KING, AND HAVE NO COMPANY WITH THE SEDITIOVS.

Conclusion.

I say againe, that without an Act of Oblivion, a gracious generall pardon from His Majestie, the Arrears of the Souldiers paid, a favourable regard had to tender Consciences, there will be neither Truth nor Peace in this Land, nor any man secure of any thing he hath.

By me *David Jenkins* Prisoner in the Tower.

A DISCOURSE TOUCHING

The Inconveniencies of a Long continued PARLIAMENT.

A Perpetuall Parliament is repugnant to the Act made this Parliament for a Triennial Parliament; for how can every three years a Parliament begin, if this be perpetual, which may be so if the two Houses please?

2. An adjournment of the Parliament makes no Session, 4 *pars inst. fol.* 27. Howbeit, before the adjournment, the King gives His Royall assent to some Bills. *Coke Ibid.*

3. There is no Session till a Prorogation

rogation or dissolution of the Parliament.

4. This Parliament, as appeares by the Act of not dissolving thereof, see divine in the printed Statutes of this Parliament, fol. 138, cannot be prorogued or dissolved, but by Act of Parliament. There hath been as yet no Act of Parliament in that behalfe: And therefore all the Acts of this Parliament, are Acts of one Session.

Plowd. com. 33. 8. Bro. relation 35. Bro. Parl. 86. Dier. 1. Mariæ 8.

5. All Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament are Acts of one day: so the Act for the Triennial and the Act for this Perpetuall, are two Acts of one day by the Law.

6. *4 Ed 3. cap.* & *36. Ed. 3. cap* 10. A Parliament is to be holden once every yeare, and more often if need shall bee; these Acts are confirmed by the Act for the Triennial Parliament. How doth a perpetuall Parliament agree with a Parliament once every yeare, or with the intention of those Lawes? How doth a Parliament every three years agree with a Parliament for ever, which may be if the two Houses please?

7. The result is this; at one day in Law

Law this Parliament two Acts have passed (for howbeit the one was in 16 Carol. and the other in 17 Carol. yet both in Law are Acts of one day) the one saith there shall be a Triennial Parliament after the end of the sitting of this Parliament: The other, this Parliament shal sit for ever if they please. The one will have a Parliament with an end, the other a Parliament without an end.

When an Act of Parliament is against common Right or Reason; or repugnant, or impossible to be performed, the Common Law shall controle it, and adjudg this Act to be void; they are the words of the Law.

11 pars. Doct. Bonhams case fo. 118. 8. E 3. 3. 30. 33. E. cassavit. 32. 27. H. 6. Annity 41. 11. Eliz. Dier. 113.

An Act of Parliament, that a man shall be Judg in his own Cause, is a void Act. *Hobbart* Fol. 120.

Begin with Common Right. It is against Common Right, that indebted men should not pay their debts; That if any Member of the House of Commons doe any Subject wrong by disseising him of his land, or dispossessing him of his goods, or blasting of his fame, or doing violence to his person, that such persons during their lives should not be questioned by a priviledge of Parliament, and that extended also to many other beside them-

themselves; common right doth abhor these Enormities, which a perpetuall Parliament doth beget, besides the utter destruction of all mens actions, real, personall, or mixt; who have to do with Parliament-men, by the Statute of Limitation, which confines Suites to certain years. 21. Iac. c. 16.

For Common Reason. Parliaments were ordained for remedies to redresse publique grievances; it is against reason they should make publique and insufferable Grievances. The Law of the Land allowes no protection for any man imployed in the service of the Kingdom, but for a yeare to be free from Suites, and in many Suites none at all, howbeit he be in such service; but a Parliament perpetuall may prove a protection, not for a yeare, but for ever, which is against all manner of reason. 39. H. 6. 39.

For impossibility. The death of his Majesty (whose life God prolong) dissolves it necessarily; for the Writ of Summons is, *Carolus Rex in hac individua*, and *Carolus Rex* is in this particular, *habiturus colloquium & tractatum cum prælatis & proceribus*, &c. King *Charles* being to have conference and Treaty with his prelates and peeres; *Carolus Rex* cannot have

colloquium.

2 H. 5. Gook title Parl. 3. pars.

colloquium et tractatum, Conference, and Treaty when he is deceased, and therefore it is as impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man a live.

For repugnancy. That which is but for a time cannot be assumed to have continuance for ever, it is repugnant.

The end of the Act 17 *Caroli Regis* which is to continue at pleasure, is in the said act expressed to be to raise credit for money for these three purposes. First, for relief of his Majesties Army and People in the North. Secondly, for preventing the imminent danger of the Kingdom. Thirdly, for supply of other his Majesties present and urgent occasions. These ends are ended, the relief of that Army, the imminent danger supposed was six yeares agoe, the supply of his Majesty hath been a supply against him; take away the end, the meanes thereto are to no purpose; take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and Reason, the Act should end, the Law rejects things unprofitable, and useless.

Sir Anthony Maines case, 5. pars. 1 H. 4. 6. Litt. cap. Villein.

A perpetuall Parliament (besides

that

that it incites men to ſelfe-ends, deſtructive of the publick, of which the whole Kingdom hath had ſufficient experience) will be a conſtant charge to the Kingdom; for that every County and Borough, who ſend Members to the Parliament, are by the Law to pay Wages to their Parliament-men, which to many Counties will amount above ſome Subſidies yearely; there are many poore Borough-Towns in each County of this Kingdom, who being to maintaine two Burgeſſes in Parliament, will be quickly beggered, if the Parliament have no end. For all which reaſons it is clear, that ſuch long continuance of Parliaments, will inſtead of a remedy (which is and ought to be the proper and true end of Parliament) become an inſufferable Grievance and Oppreſſion to all the People of the Land.

The Writ of Summons this Parliament is the *Baſis* and Foundation of the Parliament. If the foundation be deſtroyed, the Parliament fals. The Aſſembly of Parliament is for three purpoſes. *Rex eſt habiturus colloquium & tractatum cum Prælatis, magnatibus & proceribus ſuper arduis negotiis, concernentibus.* 1. nos, 2. *Defenſionem regni noſtri.* 3. *defenſionem Eccleſiæ Anglicanæ*

me. This Parliament hath overthrown this foundation in all three parts. 1. *Not.* The King they have chased him away, and imprisoned him; they have voted no Prelates, and that a number of other Lords, about fourty in the City must not come to the House, and about fourty more are out of Town; the *colloquium & tractatus* are made void thereby. For the King cannot consult and treat there with men removed from thence. 2. *Defensionem regni nostri*, that is gone; they have made it their Kingdom, not His, for they have usurped all his Soveraignty. 3. *Defensionem Ecclesiæ Anglicanæ*, that is gone; that *Ecclesia Anglicana* must be understood necessarily that Church that at the test of the Writ was *Ecclesia Anglicana*, they have destroyed that too. So now these men would be called a Parliament, having abated, quashed and made nothing of the Writ whereby they were summoned and assembled. If the Writ be made void, all the Processe is void also; that House must needs fall where the Foundation is overthrown. *Sublato fundamento opus cadit*, the foundation being taken away, the work falls, is both a Maxime in Law and reason.

For some years past, there is no

crime

crime from treason to trespass, but they are guilty of all Treasons, Felonies, Robberies, Trespasses are *contra pacem, coronam & dignitatem Regis*, against the Peace Crown and Dignity of the King; as appeares by all Indictments in all Ages. *Pax Regis*, the Kings peace, *Corona Regis*, the Kings crown, *Dignitas Regis*, the Kings dignity, are all trod under foot, and made nothing; *Pax Regis*, the peace of the King is become a Warre against the King, his Dignity put into prison, and the Crown put upon their own heads.

All the Judges of England have resolved, that Noble-men committing Treason have forfeited their office and Dignity; *their office is to councell the King in time of Peace, to defend him in time of Warre*, and therefore those men against the duty and end of their Dignity taking not only councell, but Armes also to destroy him. and being thereof attaint by due course of Law, by a tacit condition annexed to the estate of their dignity, have forfeited the same; they are the words of the law, and therefore they have made themselves incapable to be Members of the upper House.

Nevils case 7. part 34. 2. Iac.

The

The Oppressions of the People.

Briberies, Extortions, Monopolies, ought to be inquired after by the House of Commons, and complained of to the King and Lords. What have they done?

The House of Commons cannot by the Law commit any man to prison who is not of the said House, for Treason, Murder, or Felony, or any thing but for the disturbance of the publique peace, by the priviledge of the whole Body.

They have no power by the Writ which the King sueth to elect and returne Members of that House, so to do. For the Writ for them is only *ad faciendum & consentiendum*, to those things, whereof his Majesty shall consult and treat with his Prelates and Nobles, *& de communi consilio Regni* shall be there ordained, as appears by the Writ. Here is no separate power given over the Kings people to them but only *ad faciendum & consentiendum*; and in all times this hath bee expounded and restrained to that which concerned their own Members in relation to the publique Services as they are Members of the corporate Body

4 pars inst. 23, 24, 25.

Body of the Parliament, whereof the King is the Head.

But that the House of Commons have committed any man for Treason, Murder or Felony, or for any offence that had no relation to a Member of the House of Commons, as it is against Law and reason, so no instance can be given till this Parliament.

All Questions and Tryals, where witnesse are examined, the Examination is upon Oath by the Law, by all our Books, Statutes, every dayes practice. Examination without an Oath is but a loose discourse; therefore the House of Commons not claiming power to give Oath have no power to examine any men. 15.H.6.43. 22.E.4.22. 5.H.4.6.8. 3o.H.6.46.

No man shall be imprisoned by the King or his Councell, unlesse it be by indictment, presentment of his good and lawfull Neighbours where such deeds be done, in due manner, or by Processe made by Writ originall at the Common Law; this Statute rehearses *Magna Charta*, *p.*29. and expounds *Lex terræ*, the Law of the Land there mentioned: this Law bindes all men, and the House of Commons (for they say they are of the Kings Councel) in all points, but only against the disturbers of the service of the Parliament; and 25.E.3.c. 4.Petition of Right. 3.Car.

therefore

therefore the Imprisonment of several persons who are not their Members, for no disturbance to their Members, is utterly against the Law of the Land, and the Franchise of the Freemen of this Realm.

Cui non licet quod minus, non licet quod Majus; he who may not do what is lesse, may not do what is greater, they cannot commit a man for murder or Fellony, much lesse for Treason.

8. pars, Cook 120

No Court can fine and imprison, but a Court of Record; the House of

27 H.6.8.

Commons is no Court of Record; the House of the Lords where the King is in person, his Nobles and his Judges, and Counsell at Law, the Masters of the Chancery assisting, is a Court of Record, and that is the Court of Parliament, where the *Colloquium & tractatus* is; The House of Commons may present Grievances, grant or not grant Aides, consent or not consent to new Laws; but for fining or imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They

21 E.4.fol. 46.

have no journall Book, but sithence *Edw.* 6. time 6. *Hen.* 8, *cap. cap.* 15. doth not prove the House of Commons to be a Court of Record, it mentions only to be entred on Records in the Book of the Clerk of the Parliament if

any members depart into the Coun- Commons
try. There is no Iournal but sithence in Parlia-
time, and that is a Remem- ment ne
brance or memoriall, as 11. H. 4. 13. sont Iud-
The whole Parliament is one cor- ges.
porate Body, consisting of the Head
and three Estates: The Court is only
where were the *Consilium & tractatus*
is, where the consult and treaty is with
the King, which is in the House of
Lords only.

The House of Commons claim not 14 H. 8. 3.
to examine upon Oath any Man; no 36 H. 8.
Court can be without a power to give Dier 60.
an Oath; Courts Baron, Court of Pi- 4. pars. inst.
powders, County Court, may and doe cap. 1.
give Oath; no Court can be without
power to try, no triall can be without
Oath; and therefore the house of
Commons not claiming power to give
an Oath, can bring no matter to tryal,
and consequently can be no Court.

The behaviour of the Commons at
a Conference with the Lords; the
Commons are alwayes uncovered, and
standing, when the Lords sit with their
hats on, which shewes they are not
Colleagues in judgment; for fellow-
Iudges owe no such reverence to their
Companions.

When was ever Fine imposed by the 11 H. 4. c.
House of Commons estreated in the 11.
Exche-

Exchequer? The ejecting of a Member, who hath sitten, is against the Law; for they cannot remove a man out of the House unduly returned much lesse a man returned duly.

2 H. 4. cod. 1 H. 5. c. 1. 8 H. 6. c. 7. 23 H. 6. c. 15.

By these Lawes it appeares, that if any undue return be made, the person returned is to continue a Member, the Sheriffs punishment is 100 l. one to the King, another to the party that is duly elected, Imprisonment for a year without Bail or Mainprise; and that person who is unduly returned, shall serve at his own charge, and have no benefit at the end of the Parliament by the Writ *De solutione feodorum Militum, Civium, & burgensium Parliament.* And the tryall of the falsity of the return, is to be before the Iustices of the Assizes in the proper County, or by action of Debt in any Court of Record. This condemns the Committee for undue Elections, which hath been practised but of late times; for besides these Lawes, it is against a maxime in the Common Law; an Averment is not receivable against the returne of the Sheriffe, for his Return is upon Oath, which Oath is to bee credited in that Suit wherein the Return is made.

3 Ed. 4. 20. 5 Ed. 4. 41.

The said Statutes condemne and make

make those Members no Members, which were not reliant in the County and Boroughs, for which they were elected, at the time of the teste of the Writ of the summons of the Parliament, and any abusive practice of later times to the contrary is against the Law, and ought not to be allowed.

Assault upon Parliament-men.

If a Parliament-man, or his Menial Servant be assaulted, beaten, or wounded, in the Parliament time, proclamation shall be made where the deed is done, that the Offender shall render himselfe to the Kings Bench, within a quarter of a year after proclamation made, & the offence there be tryed; for Default of appearance the Offender is declared, attainted of the Misdeed, and it is accorded that hereafter it be done likewise in the case. 5 H.4.c.6. 11.H.6.c. 11.

Serving of processe upon a Lord of Parliament punished in the Lords House. Bogo de Clare 11. E.3.4.pars inst.fol.24.

Serving of processe upon *Thornsby* punished of in the *Chancery*, and there the Offenders were convicted. Io. Thornbyes case.

The premises prove, that breaches of privilege of Parliament may be punished Clerk of the Parl. ibid.10.E.3

punished elsewhere then in Parliament.

Vpon all this Discourse, it is easie to determine what fruits may be expected from this Parliament, continuing as long as the two Houses please, and that there is no safety for this Common-Wealth, but by the observation of their antient Franchises, customes, and Lawes.

Conclusion.

I say againe, that without an Act of Oblivion, a gratious generall pardon from His Majesty, the Arreares of the Souldiers paid, a favourable regard had to tender consciences, there will be neither Truth nor Peace in this Land, nor any man secure of any thing he hath.

AN

AN APOLOGY FOR THE ARMY.

Touching the eight Quæres, &c.

LONDON,
Printed in the Yeare
1648.

AN APOLOGY FOR THE ARMY.

Touching the eight Queries, &c.

AN APOLOGY FOR THE ARMY.

THese Treasonable and insolent *Queries* make the Army the houses Subjects, and not the Kings. *None by the Lawes of this Land can in this Kingdome have an Army but his Majesty.* Bracton, fol. 118. Stamford, fol 2.

It appeares, the Army doth now evidently perceive, that they were misled by the specious pretences of *Salus Populi*, the maintenance of the Kings Honour, and of the maintenance of the Lawes of the Land, and Liberties of the Subject, to take up Armes against their naturall Liege Lord and Soveraigne the King: the people is the Body, the King is the Head, Was the Body safe when the Head was distressed and imprisoned? For Lawes and Liberties, have not the prevailing party in the two Houses destroyed above an hundred Acts of Parliament, and in effect *Magna Charta*, *& Charta de Forresta*, which are the Common lawes of the land? Doth Mag Chart. c. 1. & ult. All the Act concerning the King, Church, and Church men 25. Ed. 1. cap. 1.

Excise, the Fifth and Twentieth parts, Meal-money, and many more Burdens which this Land never heard of before, maintaine the Liberties of the people? You and that party of the two Houses, made the Army by severall Declarations before Engagement, believe that you would preserve the Kings Honour and Greatnesse, the Lawes and Liberties of the people: The Army and the whole Kingdome now *facta vident*, see your Actions, and have no reason longer to believe your Oathes, Vowes, and Declarations; and since that party in the two Houses refuse to performe any thing according to their said Oaths, Vowes, and Declararions, the Army and the Kingdome may and ought, both by your own principles, and the Lawes of the Land, to purme the ends for which they were raised. And so your first *Quære* is resolved; whereby it is manifest, that specious pretences to carry on ambitious and pernitious Designes, fix not upon the Army, but upon you, and the prevailing party in both Houses.

3 par. Inst. f. 12. 29 El. 1 Iac ibi. 3 & 3. E. 6. c. 3. 11 H. 7. c. 1.

The solution of the second Quære.

The Army, to their eternall honour, have freed the King from imprisonment at *Holmby*. It was High Treason to

to imprison his Majesty: To free his Majesty from that imprisonment was to deliver him out of traiterous hands, which was the Armies bounden duty by the Law of God and the Land. That party refused to suffer his Majesty to have two of his Chaplaines for the exercise of his Conscience, who had not taken the covenant, free accesse was not permitted; doth the Army use his Majesty so? all men see that accesse to him is free, & such chaplains as his Majesty desired are now attending on his Grace: who are the guilty persons, the Army, who in this action of delivering the King, act according to law, or the said party who acted treasonably against the Law? who doth observe the Protestation better, they who imprison their King, or they who free him from prison?

That this Army was raised by the Parliament, is utterly false. The Army was raised by the two Houses upon the spetious pretences of the Kings honour, common safety, and the preservation of Lawes, and Liberties; which how made good, hath been shewed before, and all the people of the Kingdome doe find by woful experience.

The two Houſes are no more a Parliament, than a Body with out a Head a Man. The two Houſes can make no Court without the King; they are no Body Corporate without the King; they all, Head and Members, make one Corporate Body. And this is ſo cleare a Truth, that in this Parliament by the Act of 17. *Caroli* it is declared, That the Parliament ſhall not be diſſolved or prorogued but by Act of Parliament. But the two Houſes may reſpectively adjourne themſelves. Two Houſes and a Parliament are ſeverall things, *cuncta fidem vera faciunt*; all circumſtances agree to prove this truth. Before the *Norman* conqueſt and ſince to this day the King is holden *Principium, Caput, & Finis*, that is, the beginning, Head, and chiefe end of the Parliament, as appeareth by the Treatiſe of the manner of holding of Parliaments made before the Norman Conqueſt; by the writ of Summons of Parliament whereby the Treaty and *Parler* in Parliament is to be had with the King only, by the Common Law, by the Statute-Law, by the Oath of ſupremacy taken at this, and every Parliament, it doth manifeſtly appear that without the KING, there can be no colour of a Parliament.

14 H 8,3.
36,H 7, Dier 60.4 pars Jeſtit p. 1, 3 12,14.
16 R 2 c 1.
5 Eliz c 2
17 Carol. The Act for the continuance of this Parliament.
4 par inſtit. p.18
4 par.inſtit, p.9
5 Eliz c,1, 2

How

How many Votes have they revoked in one Session, yea, and Bills? Was there ever the like done? Nay, is not the constant course of Parliaments violated and made nothing thereby? They are guarded by armed men, divide the publike Money among themselves, and that party endeavours to bring in a Forraign Power to invade this Land againe. If they be no Parliament, as clearly they are none without his Majesty, they have no priviledges, but do exercise an Arbitrary, Tyrannicall and Treasonable power over the people.

By the Law of the Land, when Treason or Felony is committed, it is lawfull for every Subject, who suspects the Offendor, to apprehend him, and to secure him, so that Justice may be done upon him according to the Law. 7 H 4,20 8 H 4,3. 9 E 4,37 4 H 7,18 27 H 8,23

You say, the disobedience of the Army is a sad publick precedent, like to conjure up a spirit of universall disobedience. I pray object not that conjuring up to the Army, whereof you and the prevailing party in the houses are guilty, who conjured up the spirit of universall disobedience against his Majesty, your and our only Supreame Governour, but you, and that party in

the two Houſes, and even then when the Houſe of Commons were taking and did take the ſaid Oath of Supremacy? For the Covenant you mention, it is an Oath againſt the Lawes of the Land, againſt the petition of Right, deviſed in *Scotland*, wherein the firſt Article is to maintaine the Reformed Religion in the Church of *Scotland*: And certainly there is no Subject of the Engliſh Nation doth know what the Scottiſh Religion is. I beleeve the Army tooke not the Covenant. No man by the Law can give an Oath in a new caſe without an act of Parliament; and therefore the impoſers thereof are very blameable, and guilty of the higheſt Crime.

2 par. Coll. of Ord. pag. 303.
3 par. inſt. fol. 165.
Petition of Right 3.
Cat. 3 part. inſtit 71.

The Writer of theſe *Queres*, ſeems to profeſſe the Laws; Let him declare what act of Parliament doth juſtifie the tendring, giving, or taking, of the ſaid Oath, he knoweth there is none, he knoweth that all the parts of it are deſtructive of the lawes and Government to maintaine which the *Law* of Nature, and the Law of the Land hath obliged them. The Oath of the Covenant makes the Houſes ſupream Governours in cauſes Eccleſiaſtical; the oath of ſupremacy makes the King ſo; and yet both taken by the

ſame

ſame perſons, at the ſame time. What credit is to be given to perſons who make nothing of Oathes, and contradict themſelves? How doe the Covenant & the Oath of Supremacy agree? How do their proteſtation and the Covenant agree? How do their Declarations and Oaths agree? The Lord be mercifull to this Land for theſe Oaths.

It is a ſad thing to conſider that ſo many Gentlemen who profeſſe the Lawes, and ſo many worthy men in both Houſes ſhould be ſo tranſported as they are, knowing that the Lawes of the Land from time to time, and in all times, are contrary to all their actions, and that they yet ſhould amuſe themſelves and the people with the word Parliament without the King and with the Covenant; whereas they know they are no Parliament without His Majeſty; And that Engliſh men throwout the Kingdome ſhould ſwear a Covenant to preſerve the reformed Religion of *Scotland*, in Doctrine, Worſhip, Diſcipline, and Government, which they do no more know than the Doctrine, Worſhip, Diſcipline and Government of *Preſter John in Æthiopia*; if they conſider it they cannot but diſcerne that this is a high deſperate and impious madneſſe.

Be wise in time: Without the King and the Lawes, you will never have one hour of safety for your Persons, Wives, Children or Estates. Be good to your selves and to your posteritie, apply your selves to be capable of an Act of Oblivion, and of a Generall Pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable liberty for mens consciences, and God will blesse your endeavours, and the people (to whom you are now very hatefull) will have you in better estimation.

The third Quære is thus answered.

You resemble the Army to *Iack Cade* and his complices, and you cite the Act of Parliament of 31. *Hen. 6. cap.* 1. And that it may appear who acts the part of *Iack Cade*, you and that party in the two Houses, or the Army, I think it necessary to set down the said Act in words at length as followeth.

First, *whereas the most abominable Tyrant, horrible, odious & arrant false Traytor Iohn Cade* calling and naming himself sometime *Mortimer*, sometime Capt. of *Kent*, which name, fame, acts and feats are to be removed out of the speech and minds of every faithfull Christian man perpetually, *falsely*

and

and traitrously purposing, and imagining the perpetuall destruction of the Kings said person, & finall subversion of this Realm, taking upon him Royall Power, and gathering to him the Kings people in great numbers, by false subtil imagined language, and traitorously making a stirring Rebellion & Insurrection, under colour of Iustice, for reformation of the Lawes of the said King, robbing, stealing & spoyling great part of his faithfull people. Our said Soveraigne Lord the King considering the premisses, with many other which were more odious to remember, *by the advice and consent of the Lords aforesaid & at the request of the said Commons,* and by authority aforesaid, hath Ordained and established that the said *John Cade,* shall be reputed, had, named, *and declared a false Traytor to our Soveraigne Lord the King;* and that all his tyranny, acts, feats and false opinions shall be voyded, abated, nulled, destroyed, and put out of remembrance for ever; and that all Indictments, and all things depending therof, had and made under to power of tyranny, shall be likewise voyd annulled, abated, repealed, and holden for none: and that the bloud of none of them be thereof defiled nor corrupted.

red, but by the Authority of the said Parliament clearly declared for ever: and that all Indictments in times coming, in like case under power of Tyranny, Rebellion and stirring had, shall be of no Record nor effect but void in Law; *and all the petitions delivered to the said King in his last Parliament holden at westm. Nov. 6. in the 29. of his reigne against his mind, by him not agreed, shall be taken and put in oblivion, out of remembrance*, undone, voided, annulled, and destroyed for ever, as a thing purposed against God and Conscience, and against his Royall Estate and preeminence, and also dishonourable and unreasonable.

Now we are to examine who hath trod in the steps of *Iack Cade*, you and the present prevailing party of both Houses *take upon them, and do take all the Royall power in all things*; so did Iack Cade; as appeares by the said Act; the Army do not so: *They who imprison the King purpose to destroy his person* (our imprisoned Kings alwaies * Edward 2. Henry 6. Richard 2. fared so) Iack Cade did likewise so purpose; The said party in the two Houses *made a stirring under colour of Iustice for reformation of the Lawes*; so did Iack Cade; The Army do not so

but

but desire that the Lawes should be observed: Iack *Cade levied war against the* King, The Army preserves Him: Iack *Cade* dyed *a Declared Traytor to his Soveraign Lord* the King; this Army might have lived to have the glorious true Honor of being restorers of their King.

Simon Sudbury Archbishop of *Canterbury* was murthered by *Jack Straw*. *William Laud* Archbishop of *Canterbury* was likewise murthered by that party of the two Houses, for that an Ordinance by Law cannot take away any mans life, and his life was taken away by an Ordinance of the two Houses, the Army had no hand in it. Many misled by *Iack Straw*, perceiving his Trayterous purposes, fell from him, and as that was lawfull, just, and honourable, so it is for this Army to adhere to their naturall King, and so endeavour to settle the Kingdome again in the just Lawes and Liberties thereof, *London* did then right worthily adhere to the King, and the Laws, and not to Iack Straw and his specious pretences, and it is hoped they will now so doe; By this it appeares, that the Gentlemans discourse touching *Iack Cade*, faltons altogether on his party, and cleareth the Army.

25 Ed. 3. 4.
28 Ed. 3. 3.
Petition of Right.

To

to the IV. which is resolved thus.

The Arrearer of the Army (howbeit it is the least thing they look after) yet being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that party in the Houses: a person who serves in any kinde, and is not paid his Wages, the desertion of that service is warrantable by the Lawes of the Land; You say, the Houses will reforme all things when the Army doth disband. Who will believe it? VVill any believe that the setling of the Presbytery will do it? VVill any believe that his Majesty wil passe the propositions sent to Him to *Newcastle*? Will any man believe that this Kingdom will ever be quiet without his Majesty and the ancient and just Lawes, Can the Members of the Army conceive any of them to be safe in any thing without a pardon from His Majesty? Have they not seen some of their fellows hanged before their eyes for actions done as Souldiers? Shall the Kindom have no account of the many Millions received of the publique Money, Will the Members of the Houses accuse themselves? Shal private and publique Debts be never paid? Shall the Kingdome lie ever under burthens of Oppression and Tyranny

Fitz N.B. 159.
E. 4.206
38 H.6.27
23 Eliz Dier, 936.

ny? There is no visible way to remedy al these Enormities, but the power of the Army.

To the V. *which is solved thus*

The Kingdom hath better assurance of Reformation from the Army, than from the Houses, for that in their Military way they have been just faithful and honourable, they have kept their words; That party of the Houses have been constant to nothing but in dividing the publique Treasure among themselves, and in laying Burdens upon the people, and in breaking all the Oathes, Vowes, and promises they ever made, As the Army hath power so now adhering to the King, all the Lawes of God, Nature, and Man, are for them, their Armies are just, & blessed, & the King is bound in justice to reward his Deliverers with honour, profit, and meer Liberty of conscience.

2 & 3 E, 6 c. 2
11 H 7, c 1.
Calvins case 7 pars, Cook, fol. 11.

To the VI. *Quære.*

All the sixth *Quære* containes calumnies cast upon the Army, the new Elections are against all the Lawes mentioned in the Margin, and are against the Ejection of the Old Members, and by this it may be judged what a House of Commons we have. By the said Lawes it appears, that

11 H 4, c, 1
1 H, 5, c, 1
8 H, 6, c, 7
23, H, 6, c 13

any

any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is two hundred pounds, one to the King, and the other to the party that is duly elected; Imprisonment for a year without Bail or mainprize, and that person who is unduly returned shall serve at his own charge, and have no benefit at the end of the Parliament, by the Writ *De solutione Militum, Civium, & Burgensium Parliament.* And the trial of the falsity of the returne, is to be before the Justices of Assizes in the proper county; or by action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath been practised but of late times, for besides these Laws it is a Maxime of the Common Law, an averrement is not receivable against the returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made.

3. Ed 4. 20.
5. Ed 4 42.

The said Statutes condemne Elections of such men who were not resiant and dwelt in the County or Boroughs for which they were returned; and any abusive practise of late times to the contrary, is against the Law, and ought not to be allowed,

TO

To the VII *Quære.*

The *Querist* saith, that the Votes of the Independents in the Houses were arbitrary, exorbitant, and irregular, and that they disposed and fingred more of the common Treasure than others; That whole *Quære*, I believe is false and scandalous; and the Author ought to make it good, or else to undergoe the Law of *Talio*; which is to suffer such punishment failing of his proof as the accused should in case of proofe made. 37. Ed. 3. c. 17

To the VIII *Quære.*

This *Quære* is all minatory and threatning, and the contrary of every part is true by the deliverance of the King and Kingdome from the bondage of that party in the 2 Houses by the Army, their renown will be everlasting, they secure themselves they content and please the Kingdome, City, and Countrey as appeares by their confluence to see his Majesty & the Army, & their acclamations for his Majesties safety and restitution; All which doth evidence to every one of the Army, how acceptable the intentions of the Army are to the people of this Land, who have been so long inthralled.

Sir *Thomas Fairfax*, let your Worthinesse

thinesse remember your extraction and your Ladyes by the grace and favour of the Prince, to be in the ranke of Nobility, Remember what honour and glory the present Age and all posteri y will justly give to the Restorer of the King to his Throne, of the Lawes to their strength, and of the afflicted people of this Land to peace; Let the Colonels and Commanders under You and likewise your Soldiery rest assured, that they shall not only share in the renowne of this Action, but also shall have such remuneration as their haughty Courage, and so high a virtue doth deserve. Thus his Majesty can and will do, the House neither will nor can; and God blesse you all and prosper you.

I conclude all, as I have always done, without an Act of Oblivion, a generall pardon, the arrears of the Souldiery paid, and a regard to liberty of conscience, this Kingdome will certainly be ruined.

Judge

Iudge Ienkins PLEA

delivered in to the Earl of *Manchester*, and the Speaker of the House of COMMONS.

Sitting in the CHANCERY at WESTMINSTER,

Which was read by their Command in open Court, the 14th. of Feb 1647 And there avowed.

By DAVID JENKINS Prisoner in NEWGATE.

LONDON,
Printed in the Yeare 1648.

Judge Jenkins PLEA

Delivered into the Earle of *Manchester*, and the Speaker of the House of COMMONS, sitting in the CHANCERY at WESTMINSTER.

I Have been required to appear in the Chancery the Twelfth of this instant *February*, before Commissioners appointed by the two Houses for the keeping of their Great Seal, and managing the Affaires of the Chancery.

I cannot, nor ought, nor will submit to this power. I am a Judge sworne to the Lawes. The Law is, First, that this Court is *Coram Rege in* Cap-

4 pars inst. fol. 79 8 E 4. fol. 5. 9 E:4.f. 25.

Cancellaria; Secondly the Chancellor or Keeper of the great Seale is by delivery of the Great Seale to him by the KING, and by taking of an Oath.

The Oath followeth in these words.

42 pars. inst. fol. 88 10. R. 2. rot parl. num. 8.

1. *Well and truly to serve our Soveraigne Lord the King, and his people in that office.*

2. *To do right to all manner of people poore and rich, after the Lawes and usages of this Realme.*

3. *Truly to counsell the King, and his Councell to conceale and keep.*

4. *Not to suffer the hurt, or disheriting of the King, or that the rights of the Crown be decreased by any means, as farre as he may let it.*

5. *If he may not let it, he shall make it clearly and expresly to be knowne to the King with his advice and counsell.*

6. *And that he shall do and purchase the Kings profit in all that he reasonably may as God him help, and the contents of Gods book.*

The

The said Commissioners among others have Imprisoned their King, have declared to the Kingdome that they will make no Addresses or Applications to him, nor receive any from him. Declar. 17 Ian. 1647.

Have counterfeited a new great Seal, and after destroyed the true old great Seale which belonged by the Law to the Kings custody. Articuli sup charters c. 5.

These Commissioners have had no Seale delivered to them by his Majesty, have taken no such Oath, or full ill kept it, and for these evident reasons grounded upon the fundamentall Lawes of this Land, these Commissioners have neither Court, Seale or Commission, and therefore I ought not against the Lawes, against my knowledge, and against my conscience submit to their power.

To affirme that they maintaine the Kings power and authority in relation to His Lawes (as they often do) and restraine only his Person, is strange.

They must be remembred that the House of Commons this Parliament gave in charge to Mr. Sollicitor upon the prosecution of the Bill of attainder against the Earle of *Strafford*, to declare the Law to be, *that Machination* Mr. Solici. pag. 27.

tion of war against the Lawes & Kingdome, is against the King, they cannot be severed.

Mr. Pim. Pag. 16.

Mr. Pym had in charge likewise upon the same prosecution to declare. *That the King and his people are obliged one to another in the nearest relation, he is a Father, & the child in law is called* pars patris, *he is the Husband of the Common-wealth, they have the same interests, they are inseperable in their condition be it good or evill; he is the head, they are the body, there is such an incorporation as cannot be dissolved without the destruction of both.*

20 H.7. fol.7. 8 H.7. fol.12. 1 Ed.5. fol.3. 4 Ed.4. fol.25 3 Ed.4. fol.29

This agrees with our Lawes, and the Law of this Land: In that argument of Mr. Solliciter and discourse of Mr. Pim directed by the House of Commons are contained the true rights, liberties and lawes of the people deduced from our Ancestors in all ages; & wherein there is no line or word but is agreeable to the Lawes, and is a necessary and usefull booke to be perused, and followed by all, which book was published by Order of the House of Commons. If the doctrine of that book had bin followed, we had not bin so miserable as we are; neither had these great evills ensued, for the which the Land mourns.

In

In this Moneth of *February*, six years now past, the onely difference between his Majesty and the prevailing party in both Houses was touching the power of the *Militia*, which in plaine *English* is, Power over Sea and Land: this was the sole quarrell; the King and his Progenitours have had it in al Times, the Lawes have fixed it upon them, they have used it for the Weal of the people, none of the Subjects ever had it or claimed it, the Lawes deny it them, for the time they have had it, our pressures have bin miserable.

Colle&. of Ordinances. 1. part. fol. 66. 67. 81.

His Majesty hath a numerous issue, and so hath his Father: many great persons of *England*, and *Scotland* are of the Blood Royall, and all the Kings of *Christendom* are of the same Blood, so long as the Lawes last, or any of the said persons, or their Discendants be living, this people shall have neither peace nor profit, but all the confusions that are imaginable will attend them.

And therefore (at length) be good to your selves, restore our King, receive from him an Act of Oblivion, a generall pardon, Assurance for the Arreares of the Souldiery, and meet satisfaction to tender consciences.

February 12. 1647. By *David Jenkins*, Prisoner in Newgate.

THE ANSVVER OF Judge Jenkins, TO THE IMPVTATION PVT UPON HIS PLEA IN CHANCERY

Which was read in open Court the 14. of *Febr.* 1647.

And avowed by *David Ienkins* Prisoner in *Newgate.*

PRINTED In The Yeere 1648.

THE

ANSVVER

OF

AN Sudge Jenkins,

TO THE

IMPVTATION

BY SUPON HIS

TO THE

IMPUTATION

PRESENTED

AGAINST

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THE ANSVVER OF *Judg Jenkins* TO THE IMPUTATION Put upon him in CHANCERY.

I Have no diſpoſition, nor ever had, to be known by any publique Writing: theſe miſerable times, which fill many mens mouthes, and moſt mens eares with notorious untruths, thereby to blaſt and deſtroy the Kings ſacred Majeſty, his Lawes and Government, & to bring in a confuſion; enforceth me at this time (who formerly have written nothing but for the publick)

to let the World know how unjustly the Pamphleter of this Weeke, Licensed by our *Reformers*, hath traduced me touching a Suit commenced in their Court of *Chancery* against me, by one M. *Ernley* a *wiltshire* Gentleman, touching the Estate of one Mr. *Thomas*, of *Glamorganshire*: the truth whereof is, as followeth.

M. *Thomas*, whose Father and my Grandfather were two Brothers, about seventeene yeares past made his Will, and declared by the same, his Son (being then of very tender yeares) a Ward to his Majesty, and made him Executour, and my selfe during his minority, [referring to his wardship,] to Administer his Estate personall, and testamentary, and to be accountable to his Son when he came to Age. And seventeene yeares sithence the Father dieth.

This Estate consists in a Stocke of Sheepe, so disposed by me as the number are yet continued, and for the number and condition, they were at their delivery back, to be made as good by those persons who had the charge of them, as they were when they were received.

The rest of the Estate (for any considerable part) was in Mortgages of Land

Land forfeited in the life of my young Cousin *Thomas* for many of them, and many absolutely purchased by me in his name in his lifetime, for the which I am not yet payd.

The Land discended, and ought upon Sir *Edward Thomas*, my cousin Heire at Common-Law; so that Mr. *Erneley*, the Plaintiffe in *Chancery* hath no colour for the Land; For my young Cousin dyed without issue about 17. yeares old, and could not dispose of the Inheritance of any Land by a pretended Will. The Rocke of Sheepe remaines, if the Plaintiffe and the *Reformers* have not Plundered them, for the Money it came all to the Court, it wanth satisfie the King for the Marriage.

The colour the Plaintiffe hath, is this: After the death of my olde Kinsman M. *Thomas*, by undue means the young Gentleman was married to M. *Erneleys* Daughter in a way of Ravishment, being both children, without one penny payd, or consent of Friends or Kindred, For the which a Suit of Ravishment depended against Mr. *Erneley* and others in the Court of *Wards*.

The young Gentleman dyed about 17 yeares of age, sithence these confusions;

sustains without issue; and some hours before my young Cousins death (who dyed of a pestilent Feaver) Mr. *Ernley* pretends a will made by him, and that he made his Wife (Mrs. *Ernleys*, Daughter) his Executrix: His said Wife dyes soon after, & is pretended to make a Nuncupative Will, and to make her Father (M. *Ernley*) her Executor & so pretends as Executor of an Executor of an Executor: which pretended Wills, he saith he hath proved in the Courts of his Freinds, the *Reformers*.

Whether such wills were made or no, must receive an equal examination, and of what validity they are, being pretended to be made by children *in extremis*, if made at all? And whether an Executor of an Executor of an Executor can maintain an account by the Law of the Land? And whether (I being Executor during the Minority, viz. the Wardship) my young Cousin could make such a will as is pretended, he being no Executor till his full age.

37.H. 6.5 The age touching Wills, the law of
2.E.4. this Land determins to be 21. years,
24. and before that age at common law an use could not be devised for wills touching goods & chattels, our law

for

for many ages hath left the same to the decession of the Civil & Canon Lawes in the Bishops Courts; that Law (as Iustinian hath it in the second Booke of his Institutions the 12 Chap.) is *Impubero non licet testari*: this *Pubertas* begins at 14 it is *Plena Pubertas* at 18 yeares of age: The Question is whether this *jus testandi* is in *Pubertate pleno*, or *Pubertate incepta*. Pigots Case 5 part of Cooks reports. The Doctors affirmed, that 17 yeares of age was a full age as to an infant executor to dispose of goods: this opinion hath been by others sithence denyed. Sir Edward Cooke, 11 part Inst. sect. 123. saith he must be 10 which is the time of *Plena Pubertas* 2. Hen. 4. 12. an infant of 18 years of age may be a deisseistour. Sir Io. Dodeirigge in his Booke called, *The Office, and Duty of Executors*; which they say is his, and it is a learned and laborious Treatise, *fol.* 347. delivers that this opinion of 17 years, for that ability in an infant, hath been reported otherwise, this latter opinion comes nearer the Common Law and the statute Law of the Land; which Common Law and Statute Law, gives infants no power by Deed or Will, to make any disposition of any thing;

they have, before they be 25. yeares of age.

It seems also more reasonable, because infants at 18 yeares have by the intendment of Law, as they grow in yeares, more use of reason, to discerne what is fit for them to doe and act. And for a meere stranger to sue in a Court of Conscience, who pretends by such Wills of infants (the infant Husband being ravished) against the will of the Kindred of the deceased, who dyed six yeares sithence without issue (being 17. yeares of age) and that any part of his pare of his estate should go that way by a course of Equity unless the Law be for Mr. *Ernely*, who paid not a penny with his Daughter, and who would have the Husband of his daughter bring him a portion, by his pretended Title of an Executor of an Executor of an Executor, viz. of an infant, the Executor of another infant, the Executor of a third person, seemes very strange.

The said Licensed Historiographer of theirs, hath published the 26 of this present Moneth of *February*, 1647. *that I out of a desire to keep the estate have in a suit in the court of wards, in my cousins life time, pleaded to the Jurisdiction of that court.* It is true, I

did

did so; for I conceived that the Estate would be unsafe in Mr. *Bruley's* hands; and I was willing to preserve it till my young Cousin came to be of age, to dispose of it himself, according as I was trusted.

The Law being, that the Court of Wards had no jurisdiction over the personall estate (for then the Marriage was paid for to the King, and all due to the King ascertained). It is true, that that was insisted upon as it was just, for to preserve the Estate from Mr. *Bruley*, who would have made what account he pleased to my Cousin at his full age: And this is the truth of that businesse. 32.H.8.c. 46.4.pars inst.fol. 201.202.

That I declined not the Jurisdiction of the *Chancery*, to keep an Estate in my hand; appeares, by my declining long sithence the power of the House of Commons to examine me; and the *Reformers* have all my Estate: What would Mr. *Bruley* have, when they [the *Reformers*] have all already; or can have from me, if he had any colour?

I desire the good people of this City, to observe what notorious Vmaurs their Licensed Historiographers publish, to delude the people. In this particular case they publish

Fir-

First, *That the suit against me is in the behalfe of an Orphant: Mr. Earuly* (who is plantiffe in their Court) is a *Wiltshire* Gentleman, at the least of 50 years of age, there is their *Orphant*.

Secondly, *That I made a speech to the people at the Hall door, that the questioning of me for what I had done for the* KING, *was illegall, and that the Judges had no power to try me, the* KING being absent; Another notorious untruth, For I protest to God, all that I said was only this, *God preserve the* KING *and the Lawes.*

Thirdly it is said that comming to the Barre, I stirred not my Hat; All the Lawyers then at the Bar were uncovered; wherefore I held it a civility to be also uncovered; and so I was, as they all know.

Fourthly, that the B. *of Manchester should say, I received a great estate in money, of the Orphant's estate*; As there is no truth in it, so it is most untrue that the said Lord so said (as all men present can testifie). The truth is, they care not what they do, what they say, what they swear, nor what they write, witnes the declaration of a prevailing party of the H. of commons, of the is

of

of this instant February; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their solemne League and Covenant, their Declarations to make His Majesty a glorious King, fearefull to his enemies and beloved of his Subjects; and yet now, after 22. yeares, they would insinuate to the people, that this King whom they have so much magnified, hath poysoned his owne Father.

Fifthly, it is a publike notorious untruth, That the Parliament hath published a Declaration against the King of the 11. of this instant *Feb.* whereas it is well knowne to be the Declaration of the prevailing party of the House of Commons only, without the Lords; and so they would make that prevailing party only to be the * Parliament.

Let the people of *England* believe their five senses, how it was with them seven yeares agoe, and before, during his Majesties Reigne: how this Kingdom abounded then with Peace, Plenty, and Glory, to the admiration & envy of other Nations, & now to let them consider and judge by their senses, fithence those men (whom nothing would satisfie, but all power both by Sea and Land, which in truth is the Regality

* Their Licensed Historiographer who published this is called the 1 Kingdome weekly post, from wednesday Feb. 7. to Wednesday 16 Feb. 1647.

regality & kingship, which they call the Militia) have usurped the said power regal, whether they have not by impostures and delusions, diffused among the People by themselves and their Agents, brought a flourishing kingdom to the most deplorable condition it now is in.

To the end that this Kingdome may not utterly be ruined, God incline their hearts to restore his Majesty, & for their own and their Posterities sake to receive from his Majesty, an act of Oblivion, a general pardon, assurance for the Arrears of the Souldery, & meet satisfaction for tender Consciences.

DAVID JENKINS.

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Remonstrance

TO THE

LORDS

AND

COMMONS

OF

The two Houses of

PARLIAMENT at

WESTMINSTER

The 21 of *February* 1647.

By *DAVID JENKINS*

Prisoner in *Newgate*

Printed in the Yeere 1648.

Printed in the Year 1648.

Judge Jenkins

REMONSTRANCE

TO THE

Lords and Commons

AT

WESTMINSTER

I Desire that the Lords and Commons of the two *Houses*, would be pleased to remember, and that all the good people of *England* do take notice of an Order of the House of Commons this Session, for publishing the Lord Cook his Bookes: which Order they may find printed in the last leafe of the second part of his institutes, in these words viz.

Die

Die Mercurij 12 Maij 1641.

VPon debate this day in the Commons House of Parliament, the said House did then desire and hold it fit, that the Heir of Sir *Edward Coke* should publish in Print the commentary upon *Magna Charta*, *the pleas of the Crown*, and *the Jurisdiction of the Courts*, according to the intention of the said Sir *Edward Coke*, and that none but the Heir of the said Sir *Edward Coke*, or he that shall be authorized by him, do presume to publish in print any of the foresaid books or any Copy thereof.

H. Elsynge Cler. Dom. Com.

And I doe further desire them that they would read and peruse Mr. Solicitour *Saint-Iohn*, and Mr. *Iohn Pym*, their bookes, published likewise this Session, whose titles are as followeth viz.

AN Argument of Law concerning the bill of attainder of high treason of *Thomas* Earle of *Strafford*. At a conference in the Committe of both Houses of Parliament. By Mr. *Saint Iohn* his Majesties Solicitor Generall. Published by order of the Commons House.

London *Printed by G. M. for Iohn* Bartlet, *At the Sign of the Guilt Cup*, neere S. Austins gate in Paules Church yard. 1641.

And the Speeches or Declaration of Iohn Pym Esquire. After the recapitulation or summing up of the charge of High Treason against *Thomas* Earle of *Strafford*, in Aprill 1641.

Published by order of the Commons House.

London Printed for *Iohn Bartlet* 1641.

I Nothing

1. Nothing is delivered for Law in my Books but what the House of Commons have avowed to be Law in Books of Law published by their command this Session, and agreeable to the books of Law, and Statutes of this realme in all former times and Ages.

2. The supposed offence charged on me is against the two Houses, and none ought to be judges and parties, by the Law of this Land in their own case.

3. I desire the benefit of *Magna charta, the petition of right*, and other good Laws of this Land, which ordain that all *Mens lyvelis should be by the established Lawes and not otherwise*: they are the very words of the Petition of Right.

2. part. col. of ordinances. fol. 728. 2. part. inst. fol. 47. 48. 157. 143. 4. par. inst. 23. 232. 298 4. H. 7. 18.

An Ordinance of both Houses is no *Law* of the Land, by their owne confession; and by the Books of the Lord *Cooke published by their order aforesaid*, this Session in Six severall places.

For *Sedition* in my Books there is none, but such as they have *authorised this Session to be published and printed*, to publish the *Law* is no sedition. These Positions following I do set down for the Law of the Land in my Books

books, & they themselves have justified and avowed them as aforesaid, wee agree the Law to be, and to have been in all times in all the particulars following, as here ensueth.

1. *To Imprison the King is high treason.* 3. Part instit pag 12.

2. *To remove Councellours from the King by force is High Treason.* M. Solicitor pag. 12.

3. *To alter the establisht Lawes in any part by force is High Treason.* 3 Part instit. pag 9. M. Pym. p. 28.

4. *To usurpe the royall power is High Treason.* 3. part. instit. 3 10. 12. 16.

5. *To alter the Religion establisht is High Treason.* 3. part instit. pag 9 M. Solicitor. p 0. 10. 136.

6. *To raise Rumours and give out words to allienate the peopls affections from the King is high treason.* M. Solicitor pag 9

7. *To sesse Souldiers upon the People of the Kingdome without their consent is High Treason.* M. Solicitor pag 9. M. Solcitor pag 23.

8. *The execution of paper orders by Souldiers in a military way is High Treason.* 4. pars. 4. inst p. 125. Iustice Huttons argument, fol. 39. 40.

6. *To counterfeit the great Seal is High Treason.* 4. part instit

10. *The Commission of Array is in force and none other,* 2 part Inst. articul. super chartas cap. 5

11. *None can make Iudges, Iustices Sheriffes, &c. but the King; the King makes every Court.*

12. *The great Seal belongs to the Kings Custody, or to whom he shall appoint, and none other.*

13. Ordi-

1 part. coll. of Ordin. & Cook ut supra.

13. *Ordinances of one or both houses are no lawes to bind the people.*

4. part. inst. 25.

14. *No priviledge of Parliament, holds for Treason, Felony, or breach of the Peace,* not for 20. Parliament-men forty, nor three hundred.

M. Solicitor pag. 18, 19.

15. *To subvert the fundamentall lawes is High Treason.*

M. Solicitor pag. 27.

16. *To levy war against the person of the King is high Treason.*

M. Solicitor pag. 26

17. *To perswade Forreiners to levy war within this Kingdome is High Treason.*

M. Solicitor pag. 35

18. *To impose unlawfull Taxes, to impose new Oathes, is high Treason.*

M. Pym p. 8.

19. *The King can doe no wrong.*

M. Pym p. 17.

20. *It is a pernitious Doctrine to teach Subjects, they may be discharged from the oath of Allegiance.* Then what means the Doctrine of both Houses of the Votes, 11. of Feb. 1643.

M. Pym p. 24.

21. *A necessity of a mans own making doth not excuse him.* The requiring & forting of the Militia, brought the necessity of arming upon the Houses.

3. par inst. fol. 9.

"None can levy war within this "Realm without authority from the "King, for to him only it belongeth "to levy war, by the common law of "the Land to do otherwise is High "Treason by the said Common law. The only quarrel was & is the Mili-

tia

that for which so much blood hath been spent, and Treasure. M. Solici- 70.72.

13. No *Parliament without the King* is Principium, caput & finis. 4. part. inst. p. 2. 3. 4.

14. *Presentment or tryall by Jury, is the birth-right of the Subject.* 4 pars inst. 41. 356.

There is no doubt but that many in both Houses are free from this *great sin*, and that most of the prevailing party, had at first no intentions to proceed so farre; but the madnesse of the People [who are very unstable, and so they will find them,] and the successe of their Armies [having this great rich City to suply them, with all accomodations] have so elated them, that the evill is come to this height.

For my selfe, to put me to death in this cause, is the greatest honour I can possibly receive in the world: *Dulce & decorum est mori pro patria*, and for a Lawyer and a Judge of the Law, to die, *dum sanctis patriæ legibus obsequitur*, for obedience to the Lawes, will be deemed by the good men of this time a sweet smelling sacrifice; and by this and future Times, that I dyed full of yeares, and had an honest and an honourable end, And posterity will take knowledge of these Men who put some to death for subverting of the Lawes, & others for supporting of them &c.

Yet

Bracton l. c. 9. p. 20. 7 h. pars inst. 342. 343. Stanford. 99.

Yet mercy is above all the workes of God. *The King is Gods Vicar on earth*. In *Bracton*, who was a Judg in *Henry* 3. time, you shall find the Kings Oath; *To shew mercy* is part of it. You are all his children; say, & doe what you will, you are all his Subjects and *He is your King* and parent. *Pro magno peccato paululum supplicij satis est patri*; and therefore let not the prevailing party be obdurate, out of a desparation of safety: That which is past is not revocable; Take to your thoughts your parents, your wives, your children, your friends, your fortunes, your countrey, wherein Forreigners write there is *Mira aeris suavitas errorum omnium abundantia*. Invite not them hither, the only way to be free of their company will be; *To restore his Majesty, and receive from him an Act of Oblivion: a generall pardon, assurance for the Arrears of the Souldiery and meet satisfaction to tender consciences.*

God preserve the King and the Lawes.

DAVID IENKINS,

Prisoner in Newgate.

FINIS.